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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0087; Directorate Identifier 2014–NM–234–AD; Amendment 39–18098; AD 2015–03–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes. This AD requires repetitive detailed inspections of the outboard main landing gear (MLG) support rib lower flange fasteners for discrepancies, and corrective actions if necessary. This AD was prompted by reports of failure of certain fasteners on the MLG support rib lower flange. We are issuing this AD to detect and correct discrepancies of the fasteners at the outboard MLG support rib lower flange, which could result in an airplane not meeting its maximum loads expected in service. This condition could result in structural failure.

DATES: This AD becomes effective February 24, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 6, 2015 (80 FR 3155, January 22, 2015).

We must receive comments on this AD by March 26, 2015.

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

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

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0087; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2014–0270R1, dated December 15, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes. The MCAI states:

> During production of wings, a number of taperlok fasteners were found failed after installation. The fasteners in question are located at the bottom skin of the Main Landing Gear (MLG) reinforcing plate, wing skin and Gear Support Rib 5 lower flange.
>
> This condition, if not detected and corrected could reduce the design margin of the structure [and could result in structural failure].
>
> Based on the results of the preliminary investigation, this affects only certain A319 and A320 aeroplane Models delivered since January 2014. A321 aeroplanes are not affected, as the wing assembly is done using parallel fasteners. A318 aeroplanes are not affected, since none have been delivered since January 2014.
>
> Prompted by these findings, EASA issued Emergency AD 2014–0270–E [dated December 11, 2014] to require repetitive inspections of the bottom skin taperlok fasteners at the MLG Rib 5 footprint location and, depending on findings, accomplishment of applicable corrective action(s).
>
> Since that [EASA] AD was issued, operator comments have indicated the need for clarification, as well as correction.
>
> For the reason described above, this [EASA] AD is revised to add Notes for information and to correct paragraphs (1) and (2) of the [EASA] AD.
>
> This [EASA] AD is still considered to be an interim action and further AD action may follow.

Required actions include repetitive detailed visual inspections to detect discrepancies (broken or missing fastener tails or nuts) of the outboard MLG support rib lower flange location fasteners, and, depending on findings, accomplishment of applicable corrective action(s). Corrective actions include fastener replacement. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0087.

Related Rulemaking

On January 7, 2015, the FAA issued AD 2014–26–53, Amendment 39–18068 (80 FR 3155, January 22, 2015), for certain Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes. That AD requires

repetitive detailed visual inspections to detect discrepancies of the wing lower skin surface and inboard MLG support rib lower flange location fasteners and, depending on findings, accomplishment of applicable corrective action(s).

The preamble to AD 2014–26–53, Amendment 39–18068 (80 FR 3155, January 22, 2015), explains that EASA AD 2014–0270R1, dated December 15, 2014, specifies to do repetitive detailed visual inspections of the outboard MLG support rib lower flange fasteners and nuts. However, those inspections were not required by AD 2014–26–53 because the specified compliance time for those actions was four months, and the FAA was considering further rulemaking to require those inspections. We now have determined that further rulemaking is indeed necessary, and this AD follows from that determination.

This new AD applies to the same airplane models as AD 2014–26–53, Amendment 39–18068 (80 FR 3155, January 22, 2015), but requires repetitive detailed visual inspections of the outboard MLG support rib lower flange fasteners for discrepancies (broken or missing fastener tails or nuts) and fastener replacement if applicable.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between This AD and the MCAI or Service Information

In addition to specifying detailed visual inspections of the outboard MLG support rib lower flange fasteners for discrepancies, EASA Airworthiness Directive 2014–0270 R1, dated December 15, 2014, specifies to do repetitive detailed visual inspections of the external surface of the left and right lower skin to detect missing or migrating fasteners, and detailed inspections of the inboard MLG support rib lower flange to detect any missing or broken nuts or fastener tails; and corrective actions, if necessary. However, these inspections are not required by this AD. Those actions are required by AD 2014–26–53, Amendment 39–18068 (80 FR 3155, January 22, 2015).

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of more than two fasteners at the outboard MLG support rib lower flange could result in an airplane not meeting its maximum loads expected in-service. This condition could result in failure of the structure. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0087; Directorate Identifier 2014–NM–234–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

We estimate that this AD affects 80 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,800, or $85 per product.

In addition, we estimate that any necessary follow-on actions will take about 3 work-hours and require parts costing $400 per fastener, for a cost of $655 per fastener replacement. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–03–02 Airbus: Amendment 39–18098. Docket No. FAA–2015–0087; Directorate Identifier 2014–NM–234–AD.

(a) Effective Date

This AD becomes effective February 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A319–115, A319–133, A320–214, A320–232, and A320–233 airplanes, certificated in any category, manufacturer serial numbers (MSN) 5817, 5826, 5837, 5848, 5855, 5864, 5875, 5886, 5896, and 5910, and MSNs 5918 and subsequent.

(d) Subject

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

(e) Reason

This AD was prompted by reports of failure of certain fasteners on the main landing gear (MLG) support rib lower flange. We are issuing this AD to detect and correct discrepancies of the fasteners at the outboard MLG support rib lower flange, which could result in an airplane not meeting its maximum loads expected in service. This condition could result in structural failure.

(f) Compliance

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

(g) Repetitive Inspections

Within 4 months after the effective date of this AD, or within 4 months after the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, or before further flight for any airplane that is not in operation for more than 4 months, whichever occurs latest: Do a detailed visual inspection of the left and right outboard MLG support rib lower flange to detect any discrepancy (broken or missing fastener tails or nuts), in accordance with Airbus Alert Operators Transmission (AOT) A57N006–14, Revision 00, dated December 4, 2014. Repeat the inspection thereafter at intervals not to exceed 4 months.

(h) Corrective Actions for the Inspections Required by Paragraph (g) of This AD

If, during any inspection required by paragraph (g) of this AD, any discrepancy is found on the left or right outboard MLG support rib lower flange: Before further flight, replace all affected fasteners on the affected side(s), in accordance with Airbus AOT–A57N006–14, Revision 00, dated December 4, 2014. Replacement of fasteners on an airplane does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD.

(i) Other FAA Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0270R1, dated December 15, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0087.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on February 6, 2015 (80 FR 3155, January 22, 2015).

(i) Airbus Alert Operators Transmission A57N006–14, Revision 00, dated December 4, 2014.

(ii) Reserved.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on January 30, 2015.

Jeffrey E.Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–02407 Filed 2–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Amdt. No. 91–334]

RIN 2120–AI92

Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule published on May 28, 2010. In that rule, the FAA amended its regulations by adding equipage requirements and performance standards for Automatic Dependent Surveillance—Broadcast (ADS–B) Out avionics on aircraft operating in Classes A, B, and C airspace, as well as other specified classes of airspace within the U.S. National Airspace System (NAS). This document corrects errors in regulatory provisions addressing ADS–B Out equipment and use.

DATES: Effective February 9, 2015.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Robert F. Nichols, Jr., Surveillance Services Group Manager, AJM–23, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–0629; email *Robert.nichols@faa.gov.*

For legal questions concerning this action, contact Lorelei Peter, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800

Independence Avenue SW., Washington, DC 20591; telephone 202–267–3073; email *Lorelei.Peter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This document is correcting an error that is in 14 CFR 91.225, ADS–B Out equipment and use. This correction will not impose any additional restrictions on the persons affected by these regulations. Furthermore, any additional delay in making the regulations correct would be contrary to the public interest. Accordingly, the FAA finds that (i) public comment on these standards prior to promulgation is unnecessary, and (ii) good cause exists to make this rule effective in less than 30 days.

Background

On May 28, 2010, the FAA published a final rule entitled, ''Automatic Dependent Surveillance—Broadcast Out Performance Requirements To Support Air Traffic Control Service'' (75 FR 30160).

In that final rule, the FAA established § 91.225, which provides the ADS–B equipment requirements necessary to operate in certain classes of airspace effective January 1, 2020. Under paragraph (a)(1) of that section and in order to operate an aircraft in Class A airspace, an aircraft must have installed equipment that ''meets the requirements of TSO–C166b.'' Under paragraph (b)(1) of that section, in order to operate an aircraft below 18,000 feet MSL and in identified airspace described subsequently in § 91.225, an aircraft must be equipped with equipment that ''meets the requirements of TSO–C166b; or TSO–C154c . . .''. In reviewing these paragraphs, the FAA notes that the regulatory text implies that the equipment must meet all the requirements of the referenced TSOs. As the ADS–B Out rule is a performance-based rule, it was not the FAA's intent to arguably limit operators to only install equipment marked with a TSO in accordance with 14 CFR part 21, subpart O. The FAA's intent was to permit equipment that meets the performance requirements set forth in the referenced TSOs. Evidence of that intent is found in the Notice of Proposed Rulemaking (NPRM) for this rule. In the NPRM, the FAA proposed in § 91.225(a)(1) and (c)(1) that the equipment installed ''Meets the performance requirements in TSO–C–166a'' (72 FR 56947, 56971). The inadvertent removal of the word ''performance'' in the paragraphs implementing these provisions in the final rule was in error and resulted in confusion as to whether the regulation permits other than equipment marked with a TSO, provided that equipment met the specified performance requirements.

Technical Amendment

In order to address any confusion and clarify the equipage requirements permitted under this rule, the FAA is amending § 91.225 to insert text specifying the necessary performance requirements.

Because the changes in this technical amendment result in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

List of Subjects in 14 CFR part 91

Air traffic control, Aircraft, Airports, Aviation safety.

The Amendment

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

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. In § 91.225, revise paragraphs (a) and (b) to read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment and use.

(a) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft in Class A airspace unless the aircraft has equipment installed that—

(1) Meets the performance requirements in TSO–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz); and

(2) Meets the requirements of § 91.227.

(b) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft below 18,000 feet MSL and in airspace described in paragraph (d) of this section unless the aircraft has equipment installed that—

(1) Meets the performance requirements in—

(i) TSO–C166b; or

(ii) TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz;

(2) Meets the requirements of § 91.227.

* * * * *

Issued under authority of 49 U.S.C. 106(f) and in Washington, DC, on February 4, 2015.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2015–02579 Filed 2–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 140626542–4999–02]

RIN 0607–AA52

Foreign Trade Regulations (FTR): Clarification on Uses of Electronic Export Information

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) issues this final rule amending the Foreign Trade Regulations (FTR) to reflect changes related to the implementation of the International Trade Data System (ITDS) and subsequent changes to access the Electronic Export Information (EEI). The ITDS was established to eliminate redundant information requirements, efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade by establishing a

single portal system for the collection and distribution of standard electronic import and export data required by all participating federal agencies. The Automated Export System (AES), which is a part of the Automated Commercial Environment (ACE), will include export information collected under other federal agencies' authority, which is subject to those agencies' disclosure mandates. This rule clarifies the confidentiality provisions of the EEI and facilitates the legitimate sharing of export data consistent with the goals for the ITDS. On August 22, 2014, the Census Bureau published this rule on an interim final basis. The Census Bureau is finalizing this rule without change.

DATES: *Effective date:* This rule is effective February 9, 2015. The interim rule published on August 22, 2014 (79 FR 49659), became effective August 22, 2014.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, International Trade Management Division, U.S. Census Bureau, 4600 Silver Hill Road, Room 6K032, Washington, DC 20233–6700, by phone (301) 763–6937, by fax (301) 763–8835, or by email *dale.c.kelly@census.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The Automated Export System (AES) is the primary instrument used for collecting export trade data, which are used by the Census Bureau for statistical purposes. Through the AES, the Census Bureau collects the Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration, reported pursuant to Title 15, Code of Federal Regulations (CFR), Part 30. The EEI consists of data elements set forth in 15 CFR 30.6 for an export shipment, and includes information such as the exporter's name, address and identification number, and detailed information concerning the exported product. Other agencies use the EEI for the purpose of enforcing U.S. export laws and regulations. The EEI is exempt from public disclosure unless the Secretary of Commerce determines under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g) that such exemption would be contrary to the national interest.

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109–347) established the International Trade Data System (ITDS). Pursuant to Section 405(d) of that Act, the purpose of the ITDS is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade by establishing a single portal system for the collection and distribution of standard electronic import and export data required by all participating federal agencies. The AES will include export information collected under other federal agencies' authority, which is subject to those agencies' disclosure mandates. Access and use of EEI by other federal agencies will also increase under the ITDS.

In accordance with the interim final rule published on August 22, 2014, this rule clarifies the confidentiality provisions of the EEI by amending § 30.60 of the Foreign Trade Regulations. This revision will allow federal agencies with appropriate authority to access export data in the AES, and ensure consistency with the Executive Order of February 19, 2014, titled, ''Streamlining the Export/Import Process for America's Businesses.'' This rule will facilitate the legitimate sharing of export data consistent with the goals for the ITDS.

Summary of Comments and Responses

The Census Bureau received two comments on the interim final rule published in the **Federal Register** on August 22, 2014 (79 FR 49659). A summary of the comments and the Census Bureau's responses are provided below.

The major concerns were as follows:

1. *Clarify if exporters are prohibited from sending Electronic Export Information (EEI) to a document management company outside of the United States for scanning/record retention purposes.* One commenter requested clarification on the use of foreign document management companies to retain EEI. The EEI may not be supplied by the USPPI, the authorized agent, or representative of the USPPI to foreign entities or foreign governments for any purpose. As a result, the EEI may not be supplied to a foreign document management company. However, it is permissible for a U.S. party to maintain its own IT system and application software on a server located outside of the U.S. In this situation, the U.S. party is responsible for maintaining the confidentiality of the EEI, must implement proper safeguards to ensure the EEI is protected from unauthorized use, and is liable for any violations of the Foreign Trade Regulations.

2. *Request to add ''foreign persons'' to Section 30.60(c)(4).* One commenter requested that the Census Bureau add ''foreign persons'' to the list of parties prohibited from receiving the EEI. Section 30.60(c)(4) prohibits ''foreign entities,'' a term which includes both foreign persons and companies. As a result, the previous regulations remain appropriate.

Rulemaking Requirements

Administrative Procedure Act

The Census Bureau finds good cause pursuant to Title 5, United States Code (U.S.C.), 553 (b)(3)(B) to waive prior notice and opportunity for public comment, as contrary to the public interest. With the implementation of the International Trade Data System (ITDS), the Automated Export System (AES) will capture export information collected and used by other federal agencies under their authorities. The Census Bureau is undertaking this amendment in order to accurately reflect the authorized uses of Electronic Export Information (EEI) by other federal agencies resulting from the ITDS. In particular, this rule amends § 30.60 of the Foreign Trade Regulations to help ensure that federal agencies with appropriate authority can access export data in the AES, which will ensure the efficient and timely flow of exports as well as protect U.S. interests in export controls and enforcement. Additionally, the rule complies with the directives and timelines established by the Executive Order of February 19, 2014, titled ''Streamlining the Export/Import Process for America's Businesses.'' Allowing for a period of notice and comment may delay exports and make export control more difficult, both of which are contrary to public interest.

Regulatory Flexibility Act

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 rule will not have a significant impact on a substantial number of small entities.

The purpose and goal of this rule are explained in the preamble, and are not repeated here. This rule does not mandate any new filing requirements and does not directly impact any small or large entities. Rather, this rule's impact is largely on federal entities. Indeed, to the extent they will be indirectly impacted by this rule, small entities will see reduced burdens for exports because this rule creates a

''single window'' through which exporters can comply with export laws and regulations. We received no comments on the certification in the proposed rule; accordingly, no Regulatory Flexibility analysis is required and none has been prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563, and has been drafted according to the requirements of those Executive Orders. It has also been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

This rule does not contain any information collection subject to the Paperwork Reduction Act (PRA). However, 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 PRA, unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting, and recordkeeping requirements.

Accordingly, as discussed above, the interim final rule amending title 15, Code of Federal Regulations, part 30, which was published at 79 FR 49659 on August 22, 2014, is adopted as a final rule without change.

Dated: January 30, 2015.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2015–02520 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–07–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33–9273A, 34–65686A, 39–2480A, IA–3310A and IC–29855A]

Rescission of Outdated Rules and Forms, and Amendments To Correct References

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendment.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is making technical amendments to update control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

DATES: *Effective date:* February 9, 2015.

FOR FURTHER INFORMATION CONTACT: Daniel K. Chang, Senior Counsel, at (202) 551–6792, Office of Regulatory Policy, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission published a final rule at 76 FR 71872, on November 21, 2011, which rescinded rules and forms adopted under the Public Utility Holding Company Act (''PUHCA''),[1] revised other rules and forms to correct outdated references to PUHCA, corrected outdated references due to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''the Dodd-Frank Act''), and made other ministerial corrections.[2] Congress repealed PUHCA effective 2006, and the Dodd-Frank Act amended various provisions of the federal securities laws and removed references to PUHCA from those laws.

The final rule contained a typographical error that prevented an amendment to the Code of Federal Regulations.[3] This technical amendment is being published so that the table in 17 CFR 200.800(b) can be updated to reflect that amendment.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Classified information, Conflicts of interest, Government employees, Organization and functions (Government agencies).

Text of the Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[1] 15 U.S.C. 79 (repealed effective 2006).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] The final rule incorrectly referenced 17 CFR 200.80(b) of Subpart M, rather than 17 CFR 200.800(b) of Subpart N. As a result of the incorrect reference, the table in 17 CFR 200.800(b) of Subpart N was not amended.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

■ 1. The authority citation for part 200, subpart N, continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

§ 200.800 [Amended]

■ 2. In § 200.800(b), in the table, remove the following entries: Form ET, wherever it appears; Rule 1(a); Rule 1(b); Rule 1(c); Rule 2; Rule 3; Rule 7; Rule 7(d); Rule 20(b); Rule 20(c); Rule 20(d); Rule 23; Rule 24; Rule 26; Rule 29; Rule 44; Rule 45; Rule 47(b); Rule 52; Form 53; Rule 54; Rule 57(a); Rule 57(b); Rule 58; Rule 62; Rule 71(a); Rule 72; Rule 83; Rule 87; Rule 88; Rule 93; Rule 94; Rule 95; Rule 100(a); Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies, Public Utility Holding Company Act of 1935; Preservation and Destruction of Records of Registered Public Utility Holding Companies and of Mutual and Subsidiary Service Companies; Form U5A; Form U5B; Form U5S; Form U–1; Form U–13–1; Form U–6B–2; Form U–57; Form U–9C–3; Form U–12(I)–A; Form U–12(I)–B; Form U–13E–1; Form U–R–1; Form U–13–60; Form U–3A–2; Form U–3A3–1; Form U–7D; Form U–33–S; Form ID, 259.602, 3235–0328; and Form SE., 259.603, 3235–0327.

Dated: February 3, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–02465 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0003; T.D. TTB–127; Ref: Notice No. 142]

RIN 1513–AC05

Establishment of The Rocks District of Milton-Freewater Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 3,770-acre ''The Rocks

District of Milton-Freewater'' viticultural area in Umatilla County, Oregon. The viticultural area lies entirely within the Walla Walla Valley viticultural area which, in turn, lies within the Columbia Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective March 11, 2015.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

The Rocks District of Milton-Freewater Petition

TTB received a petition from Dr. Kevin R. Pogue, a professor of geology at Whitman College in Walla Walla, Washington, proposing the establishment of the ''The Rocks District of Milton-Freewater'' AVA in Umatilla County, Oregon, near the town of Milton-Freewater. The proposed AVA lies entirely within the Oregon portion of the Walla Walla Valley AVA (27 CFR 9.91), which covers portions of Walla Walla County, Washington and Umatilla County, Oregon. The Walla Walla Valley AVA is, in turn, entirely within the larger Columbia Valley AVA (27 CFR 9.74), which covers multiple counties in Washington and Oregon. The proposed AVA contains approximately 3,770 acres and has approximately 250 acres of commercially producing vineyards. The petition names 19 wine producers that have vineyards within the proposed AVA, and it notes that three of the 19 producers also have winery facilities within the proposed AVA.

According to the petition, the distinguishing feature of the proposed The Rocks District of Milton-Freewater AVA is its soil. Approximately 96 percent of the proposed AVA is covered with soil from the Freewater series, including Freewater very cobbly loam and Freewater gravelly silt loam. These soils contain large amounts of loose, uncemented gravel, cobbles, and boulders that form very deep layers. The rockiness of Freewater series soils prevents erosion and discourages rot and mildew by allowing water to drain freely. The depth of the soil allows roots to penetrate 30 feet or more before hitting a restrictive layer of bedrock or cemented soil. The numerous cobbles in the soil absorb and store solar radiation, which raises the soil and air temperatures and reduces the risk of frost damage in the late spring and early fall. Finally, soils of the Freewater series contain high amounts of calcium, titanium, and iron, which are important nutrients for vine growth.

By contrast, the soils surrounding the proposed The Rocks District of Milton-Freewater AVA are silt loams from the Walla Walla, Ellisforde, Yakima, Umapine, Hermison, Onyx, and Oliphan series. Cobbles are uncommon or entirely absent from these soils. The soils are also not as deep as soils of the Freewater series and are often underlain by dense, compacted layers of sand and silt called ''Touchet beds.'' The soils are also less resistant to erosion than Freewater series soils and contain lower levels of calcium, titanium, and iron.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 142 in the **Federal Register** on February 26, 2014 (79 FR 10742), proposing to establish The Rocks District of Milton-Freewater AVA. In the proposed rule, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing feature—its cobbly soils—for the proposed AVA. The proposed rule also compared the distinguishing feature of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing feature of the proposed AVA, and for a comparison of the

distinguishing feature of the proposed AVA to the surrounding areas, see Notice No. 142.

In Notice No. 142, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, TTB solicited comments on whether the geographic features of the proposed The Rocks District of Milton-Freewater AVA are so distinguishable from the established Walla Walla Valley AVA and Columbia Valley AVA that the proposed AVA should not be part of those AVAs. Additionally, TTB asked for comments from winemakers who produce wine made primarily from grapes grown within the proposed AVA but who would be ineligible to use the proposed AVA name because their wines are fully finished in facilities located in the nearby city of Walla Walla, Washington. The comment period closed on April 28, 2014.

Comments Received

In response to Notice No. 142, TTB received a total of 20 comments, all of which supported the establishment of The Rocks District of Milton-Freewater AVA. Commenters included local vineyard owners and winemakers, a wine reporter, and a regional alliance of winemakers. TTB received no comments opposing the establishment of The Rocks District of Milton-Freewater AVA. TTB also did not receive any comments in response to its question of whether the proposed The Rocks District of Milton-Freewater AVA is so distinguishable from the established Walla Walla Valley and Columbia Valley AVAs that the proposed AVAs should not be part of the established AVAs.

Use of USGS Topographic Maps To Draw AVA Boundaries

One of the comments (comment 14) was from the owner of a vineyard and winery located within the proposed AVA. Although the commenter expressed support for the establishment of the proposed AVA, he also stated his concern regarding TTB's requirement that AVA boundaries be drawn using features found on USGS topographic maps. The commenter stated that because only USGS maps were used to draw the boundary, the proposed AVA contains some soil that is not of the Freewater series, which is the distinguishing feature of the proposed AVA, and also omits small pockets of land containing Freewater series soils. The commenter suggested that TTB amend its regulations to allow AVA boundaries to be drawn using ''geologic or soils series contacts on published geologic and soil maps.''

Section 9.12(a)(4) of the TTB regulations (27 CFR 9.12(a)(4)) requires proposed AVA boundaries to be drawn using features found on USGS maps, such as roads, elevation contours, range and township lines, rivers, and mountain peaks. TTB's requirement mandating the use of this type of map to mark AVA boundaries facilitates the establishment of new AVAs that share a concurrent boundary, or are located entirely within or entirely overlap an established AVA, by ensuring that the features used to draw the boundary of one AVA also appear on the maps used to draw the boundary of the other. For example, it would be difficult to determine the exact location of a new AVA in relation to an established AVA if the new AVA's boundaries followed elevation contours and roads found on a USGS map, but the established AVA's boundaries were marked on a soil survey map that did not include elevation contours or roads. Furthermore, amending the regulation requiring the use of USGS maps for AVA boundary descriptions is outside the scope of the notice of proposed rulemaking to establish The Rocks District of Milton-Freewater AVA and would require a separate rulemaking. Therefore, TTB is not taking any action on this comment in this final rule.

Impact on Wines Fully Finished Across State Lines

Of the 20 comments received in response to Notice No. 142, 16 comments addressed the issue of wines fully finished in the State of Washington from grapes grown primarily within the proposed The Rocks District of Milton-Freewater AVA (comments 2, 3, 5–11, 13, and 15–20). Section 4.25(e)(3)(iv) of TTB regulations (27 CFR 4.25(e)(3)(iv)) requires wines labeled with an AVA appellation of origin to be ''fully finished within the State, or one of the States, within which the labeled viticultural area is located.'' Currently, there are individuals who use facilities in the nearby city of Walla Walla, Washington, to fully finish wine made primarily from grapes grown within the proposed AVA, in part because of a lack of custom crush or alternating proprietorship facilities nearby in Oregon. Additionally, several winery owners located in Walla Walla stated that they also own vineyards within the proposed AVA and currently produce wines from those grapes in their Walla Walla facilities. Under the current TTB regulations, such Washington-produced wines would be eligible to use the ''Walla Walla Valley'' or ''Columbia Valley'' AVA names, due to the proposed AVA's location within both of those multistate AVAs, but the wines would not be eligible to use ''The Rocks District of Milton-Freewater'' as an appellation of origin because the wine is finished in Washington, outside the state in which the AVA is located.

Each of the 16 comments stated that TTB should amend its regulations to allow wines produced primarily from grapes grown within the proposed AVA to be labeled with ''The Rocks District of Milton-Freewater'' AVA name even if the wines are produced in facilities in Washington. Of these commenters, 9 were from individuals who specifically stated that they own vineyards within the proposed AVA but own or use facilities in Walla Walla for the production of wine (comments 5, 6, 7, 9, 10, 11, 13, 18, and 19). Four comments (comments 2, 3, 8, and 15) were from individuals who would not be affected directly by the TTB restriction but still expressed support for amending the regulations in order to benefit other growers and winemakers who may be impacted. An additional comment (comment 16) was from the Walla Walla Valley Wine Alliance, on behalf of its members in both Washington and Oregon. Another comment was from the editor and publisher of Washington Wine Report (comment 17). The final comment (comment 20) was submitted on behalf of a California-based winery and a Washington-based winery, both of which source grapes from the proposed AVA.

All 16 of the comments essentially stated that it is unreasonable for TTB to allow wine made with grapes grown within the proposed AVA and fully finished in Washington to be labeled with the ''Walla Walla Valley'' or ''Columbia Valley'' viticultural areas as appellations of origin, but not with ''The Rocks District of Milton-Freewater.'' One commenter (comment 3) stated that the current TTB regulations would ''jeopardize the vineyard owners' ability to sell their grapes as the number of winemakers within a reasonable range who finish their wines in Oregon is limited.'' Another commenter (comment 6) believes the regulations should be changed because ''almost all of the grapes grown [within the proposed AVA] are used by Washington wineries . . . ,'' meaning that very few wines would be eligible to use the proposed AVA name as an appellation of origin. The Walla Walla Valley Wine Alliance (comment 16) also notes that ''[w]ines made in Washington from grapes sourced within the proposed AVA constitute a significant percentage of the

wines produced by several Washington wineries,'' none of which would be able to use the proposed AVA name as an appellation of origin.

A small wine producing company that owns a vineyard within the proposed AVA states that it uses a custom crush facility in the city of Walla Walla because ''[t]his is a very practical business model for us because of the high cost of building a facility and the concentration of resources * * * in Walla Walla'' (comment 13). The company goes on to say that the inability to use ''The Rocks District of Milton-Freewater'' as an appellation of origin for their wines ''will be confusing to consumers'' because wine that is, in the commenter's words, ''100% 'The Rocks District' wine'' will have to be labeled as ''Walla Walla Valley'' or ''Columbia Valley.'' Because a viticultural area designation is meant to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase, the commenter believes that the company's use of ''The Rocks District of Milton-Freewater'' as an appellation of origin on their wines will further both aforementioned goals.

Finally, the editor and publisher of the Washington Wine Report (comment 17) offered a scenario to demonstrate the ''contradictions'' inherent in the current TTB regulations. He notes that ''a winery could source grapes from The Rocks District and then drive 450 miles down to the Rogue Valley [in southwestern Oregon] and label the wines as from The Rocks District of Milton-Freewater.'' He continues, ''However, a winery would not be able to truck the grapes 10 miles north to Walla Walla and do the same . . . . This defies logic and surely was not the intention of this regulation.''

TTB believes that amending the regulations in 27 CFR 4.25(e)(3)(iv) to allow AVA appellations of origin on labels of wine made outside the State in which the AVA is located would require a notice of proposed rulemaking and public comment period. Although Notice No. 142 requested comments concerning the appellation of origin regulations, the proposed rule did not formally propose any specific changes to those regulations. Additionally, any changes to the regulations concerning the use of AVA names as appellations of origin would apply not only to persons wanting to use ''The Rocks District of Milton-Freewater'' as an appellation of origin. Therefore, TTB is not proposing to make any changes to the regulation in this final rule.

However, TTB believes that the number of comments submitted in response to Notice No. 142 indicates that there is at least regional support for amending the regulations regarding the use of AVA names as appellations of origin. Therefore, elsewhere in this issue of the **Federal Register**, TTB is publishing a notice of proposed rulemaking, Notice No. 147, proposing to allow wine to be labeled with an AVA appellation of origin if the wine is fully finished, except for cellar treatment or blending that does not alter the class and type of the wine, in a State adjacent to the State in which the AVA is located. Please refer to Notice No. 147 for information on how to submit comments to TTB regarding the proposed amendment to the regulations.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 142, TTB finds that the evidence provided by the petitioner supports the establishment of The Rocks District of Milton-Freewater AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''The Rocks District of Milton-Freewater'' AVA in Umatilla County, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that The Rocks District of Milton-Freewater AVA will remain part of both the established Walla Walla Valley and Columbia Valley AVAs. As discussed in Notice No. 142, the elevations, topography, growing season, and climate of The Rocks District of Milton-Freewater AVA are similar to those of both the Walla Walla Valley and Columbia Valley AVAs. However, approximately 96 percent of The Rocks District of Milton-Freewater AVA is covered by heavily cobbled Freewater series soils, which are found only in miniscule amounts elsewhere in the Walla Walla Valley and Columbia Valley AVAs, thus distinguishing the proposed AVA from the existing, surrounding AVAs.

Boundary Description

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, ''The Rocks District of Milton-Freewater,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). TTB has also determined that the phrase ''The Rocks of Milton-Freewater'' has viticultural significance in relation to the AVA. The text of the regulation clarifies this point. Consequently, wine bottlers using the name ''The Rocks District of Milton-Freewater'' or ''The Rocks of Milton-Freewater'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of The Rocks District of Milton-Freewater AVA will not affect any existing AVA, and any bottlers using ''Walla Walla Valley'' or ''Columbia Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Walla Walla Valley or Columbia Valley AVAs will not be affected by the establishment of this new AVA. The establishment of The Rocks District of Milton-Freewater AVA will allow vintners to use ''The Rocks District of Milton-Freewater,'' ''Walla Walla Valley,'' and ''Columbia Valley'' as appellations of origin for wines made from grapes grown within The Rocks District of Milton-Freewater AVA, if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other

administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.249 to read as follows:

§ 9.249 The Rocks District of Milton–Freewater.

(a) *Name.* The name of the viticultural area described in this section is ''The Rocks District of Milton-Freewater''. For purposes of part 4 of this chapter, ''The Rocks District of Milton-Freewater'' and ''The Rocks of Milton-Freewater'' are terms of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of The Rocks District of Milton-Freewater viticultural area are titled:

(1) Milton-Freewater, Oreg., 1964; and

(2) Bowlus Hill, Oreg., 1964; photoinspected 1976.

(c) *Boundary.* The Rocks District of Milton-Freewater viticultural area is located in Umatilla County, Oregon. The boundary of The Rocks District of Milton-Freewater viticultural area is as follows:

(1) The beginning point is found on the Milton-Freewater map at the intersection of an unnamed medium-duty road known locally as Freewater Highway (State Route 339) and an unnamed light-duty road known locally as Crockett Road, section 26, T6N/R35E. From the beginning point, proceed east-southeasterly in a straight line for 0.8 mile to the intersection of State Highway 11 (Oregon-Washington Highway) and an unnamed light-duty road known locally as Appleton Road, section 25, T6N/R35E; then

(2) Proceed southeasterly in a straight line for 1.05 miles, crossing onto the Bowlus Hill map, to the intersection of three unnamed light-duty roads known locally as Grant Road, Turbyne Road, and Pratt Lane on the common boundary between section 36, T6N/R35E, and section 31, T5N/R36E; then

(3) Proceed southwesterly in a straight line for 1.1 miles, crossing back onto the Milton-Freewater map, to the intersection of the Union Pacific railroad tracks with the Walla Walla River, section 1, T5N/R35E; then

(4) Proceed southwesterly and then west-northwesterly along the Union Pacific railroad tracks for 1.2 miles to the intersection of the railroad tracks with the 980-foot elevation contour line, approximately 0.15 mile west of Lamb Street, section 2, T5N/R35E; then

(5) Proceed west-northwesterly in a straight line for 2.25 miles to the intersection of the 840-foot elevation contour line and an unnamed light-duty road known locally as Lower Dry Creek Road, section 33, T6N/R35E; then

(6) Proceed northwesterly in a straight line for 0.8 mile to the intersection of the 800-foot elevation contour line with an unnamed light-duty road running north-south in section 32, T6N/R35E; then

(7) Proceed easterly in a straight line for 0.9 mile to the intersection of the 840-foot elevation contour line with the Hudson Bay Canal, section 33, T6N/R35E; then

(8) Proceed due north in a straight line for 0.25 mile to the line's intersection with Sunnyside Road, section 33, T6N/T35E; then

(9) Proceed northeasterly in a straight line for 0.5 mile to the intersection of the 840-foot elevation contour line with an unnamed medium-duty road known locally as State Highway 332 (Umapine Highway), eastern boundary of section 28, R6N/T35E; then

(10) Proceed east-northeasterly in a straight line for 0.3 mile to the intersection of three unnamed light-duty roads known locally as Triangle Road, Hodgen Road, and Appleton Road, section 27, T6N/R35E; then

(11) Proceed east-northeasterly in a straight line for 1.25 miles, returning to the beginning point.

Signed: December 2, 2014.

John J. Manfreda,

Administrator.

Approved: December 22, 2014.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2015–02553 Filed 2–6–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0050]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe Railway Bridge, also known as the St. Johns RR Bridge, across the Willamette River, mile 6.9, at Portland, OR. The deviation is necessary to facilitate installation of new rail joints. This deviation allows the bridge to remain in the closed to navigation position during maintenance activities.

DATES: This deviation is effective from 7 a.m. on February 12, 2015 to noon on February 13, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0050] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Burlington Northern Santa Fe (BNSF) Railway

requested this deviation to facilitate the installation of new rail joints on the bridge. The bridge, also known as the St. Johns Railway Bridge, crosses the Willamette River at mile 6.9 and provides 54 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Under normal operations, this bridge opens on signal as required by 33 CFR 117.5. The deviation period is from 7 a.m. to noon on February 12, 2015; from 7 a.m. to noon on February 13, 2015. This deviation allows the lift span of the BNSF Railway Bridge across the Willamette River, mile 6.9, to remain in the closed to navigation position, and need not open for maritime traffic during the periods listed above. The bridge shall operate in accordance with 33 CFR 117.5 at all other times. BNSF will entertain requests from mariners to change the above listed schedule for emergent vessel arrivals or departures that are dependent on water level, given 72 hours advanced notice. The BNSF contact is Jeff Swanson, who can be reached at (701) 412–6593. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at any time. The BNSF Railway Bridge will not be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 27, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–02475 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0450; FRL–9922–74–Region 9]

Revision to the Arizona State Implementation Plan; Nogales Nonattainment Area; Fine Particulate Matter Emissions Inventories

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Arizona State Implementation Plan (SIP) concerning the Nogales fine particle ($PM_{2.5}$) nonattainment area 2008 and 2010 emissions inventories. These emission inventories were submitted for the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). We are approving these annual emissions inventories under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on March 11, 2015.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2014–0450 for this action. In most cases, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On September 2, 2014, EPA proposed to approve and incorporate into the Arizona State Implementation Plan (SIP) the $PM_{2.5}$ emissions inventories for the Nogales nonattainment area titled ''Arizona State Implementation Plan Revision for the Nogales $PM_{2.5}$ Nonattainment Area'' (79 FR 51923). Submitted by Arizona on September 6, 2013, the Nogales area emissions inventories provide annual 2008 and 2010 emissions estimates (tons per year) for $PM_{2.5}$ and $PM_{2.5}$ precursors (*i.e.,* nitrogen oxides (NO_X), volatile organic compounds (VOCs), sulfur dioxide (SO_2), and ammonia (NH_3)). The source categories include non-road mobile sources, non-point sources, on-road mobile sources, and point or stationary sources. The detailed Nogales emissions inventories are found in Appendix A of Arizona's submittal.

We proposed to approve this revision to the Arizona SIP because we determined that it complied with the relevant CAA requirements. EPA's requirements for an emissions inventory for the $PM_{2.5}$ NAAQS are set forth in 40 CFR 51.1008.[1] [2] We reviewed the results, procedures, and methodologies Arizona used to produce the 2008 and 2010 Nogales area $PM_{2.5}$ and $PM_{2.5}$ precursor emissions inventories and found that these emissions inventories meet the requirements of the CAA and EPA guidance. Consequently, we proposed to approve the submitted $PM_{2.5}$, NH_3, NO_X, SO_2, and VOC emissions inventories as meeting the CAA's section 172(c)(3) requirement to provide a comprehensive, accurate, and current inventory of actual emissions for the Nogales nonattainment area.

Our proposed action provides more information on Arizona's $PM_{2.5}$ emissions inventories submittal and our evaluation (79 FR 51923, September 2, 2014).

[1] 1 40 CFR 51.1008 (a)(2) and (b) do not apply for the Nogales area because they relate to requirements for attainment demonstrations and reasonable further progress (RFP); these requirements were suspended for the Nogales $PM_{2.5}$ nonattainment area so long as the area continues to meet the $PM_{2.5}$ standard. For further discussion of our Clean Data Policy as applied to the Nogales area, refer to our proposed rule (77 FR 65656, October 30, 2012) and final rule (78 FR 887, January 7, 2013).

[2] Although the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) recently remanded this rule and directed EPA to re-promulgate it pursuant to subpart 4 of part D, title I of the CAA (*see Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013)), the court's ruling in this case does not affect EPA's action on these emissions inventories. Subpart 4 of part D, title I of the Act contains no specific provision governing emissions inventories for PM_{10} or $PM_{2.5}$ nonattainment areas that supersedes the general emissions inventory requirement for all nonattainment areas in CAA section 172(c)(3). *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, (April 16, 1992).

II. Public Comments

EPA provided a 30-day public comment period as part of our proposed action on the 2008 and 2010 Nogales area $PM_{2.5}$ and $PM_{2.5}$ precursor pollutant emissions inventories submitted by Arizona. We received no comments on our proposal.

III. EPA Action

EPA is taking final action to approve the 2008 and 2010 Nogales nonattainment area $PM_{2.5}$ and $PM_{2.5}$ precursor pollutant emissions inventories submitted by Arizona and incorporate them into the SIP, as authorized in section 110(k)(3) of the CAA. We determined that Arizona's submittal is consistent with sections 110 and 172(c)(3) of the CAA.

IV. Statutory and Executive Order Reviews

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

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

This SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Ammonia, Volatile organic compounds.

Dated: January 23, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(164) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(164) A plan revision was submitted on September 6, 2013 by the Governor's Designee.

(i) [Reserved]

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) ''Arizona State Implementation Plan Revision for the Nogales $PM_{2.5}$ Nonattainment Area'', dated September 2013, including appendices A and B.

[FR Doc. 2015–02490 Filed 2–6–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 9, 12, 22, 42, and 52

[FAC 2005–80; FAR Case 2013–001; Corrections; Docket 2013–0001; Sequence No. 1]

RIN 9000–AM55

Federal Acquisition Regulation; Ending Trafficking in Persons; Corrections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; corrections.

SUMMARY: DoD, GSA, and NASA are issuing corrections to FAR Case 2013–001; Ending Trafficking in Persons (Item

I), which was published in the **Federal Register** at 80 FR 4967, January 29, 2015.

DATES: *Effective:* March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–80; FAR Case 2013–001; Corrections.

SUPPLEMENTARY INFORMATION:

Corrections

In rule FR Doc. 2015–01524 published in the **Federal Register** at 80 FR 4967, January 29, 2015, make the following corrections:

1. On page 4990, in the first column, lines 7, 11, 13, 19, 21, 25, 30, 32, 54, 60, and 66, correct ''(March 2, 2015)'' to read ''(Mar 2015)'' (11 times).

2. On page 4990, in the second column, line 41, correct ''(March 2, 2015)'' to read ''(Mar 2015).

3. On page 4992, in the first column, Alternate I, correct ''(March 2, 2015)'' to read ''(Mar 2015)''.

4. On page 4992, in the first column, section 52.222–56, line 6, correct ''(March 2, 2015)'' to read ''(Mar 2015)''.

5. On page 4992, in the second column, section 52.244–6, lines 4, 10, and 12, correct ''(March 2, 2015)'' to read ''(Mar 2015)''.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: February 3, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–02540 Filed 2–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 37 and 52

[FAC 2005–80; FAR Case 2014–008; Correction; Docket 2014–0008; Sequence No. 1]

RIN 9000–AM84

Federal Acquisition Regulation; Management and Oversight of the Acquisition of Services; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: DoD, GSA, and NASA are issuing a correction to FAR Case 2014–008; Management and Oversight of the Acquisition of Services (Item II), which was published in the **Federal Register** at 80 FR 4992, January 29, 2015.

DATE: *Effective:* March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–80; FAR Case 2014–008; Correction.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 2015–01525 published in the **Federal Register** at 80 FR 4992, January 29, 2015, make the following correction:

On page 4993, in the third column, line 22, correct ''Mar 2015'' to read ''(Mar 2015)''.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: February 3, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–02541 Filed 2–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 46 and 52

[FAC 2005–80; Technical Amendments; Corrections; Docket 2014–0053; Sequence No. 5]

Federal Acquisition Regulation; Technical Amendments; Corrections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; corrections.

SUMMARY: DoD, GSA, and NASA are issuing corrections to the Technical Amendments; (Item III), which was published in the **Federal Register** at 80 FR 4994, January 29, 2015.

DATES: *Effective:* March 2, 2015.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–80, Technical Amendments; Corrections.

SUPPLEMENTARY INFORMATION:

Corrections

In rule FR Doc. 2015–01526 published in the **Federal Register** at 80 FR 4994, January 29, 2015, make the following corrections:

1. On page 4994, in the second column, line 12, correct ''(Jan 2014)'' to read ''(Mar 2015)''.

2. On page 4994, in the second column, line 43, correct ''(Jan 2015)'' to read ''(Mar 2015)''.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: February 3, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–02529 Filed 2–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF STATE

48 CFR Parts 601, 603, 604, 605, 606, 607, 608, 609, 613, 615, 616, 617, 619, 622, 623, 624, 625, 627, 628, 631, 632, 633, 636, 637, 642, 644, 645, 647, 649, and 652

[Public Notice 8971]

RIN 1400–AD63

Department of State Acquisition Regulation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (DoS) is making technical amendments to the Department of State Acquisition Regulation (DOSAR) to provide needed editorial changes, updating procedures and terminology, and aligning the DOSAR with changes to the Federal Acquisition Regulation (FAR).

DATES: This rule is effective on February 9, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Ella Ramirez, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW., Suite 1060, State Annex Number 15, Washington, DC 20520. Telephone 703–516–1693.

SUPPLEMENTARY INFORMATION: This rulemaking is necessary to update

certain provisions of the DOSAR, located in 48 CFR parts 601, 603, 604, 605, 606, 607, 608, 609, 613, 615, 616, 617, 619, 622, 623, 624, 625, 627, 628, 631, 632, 633, 636, 637, 642, 644, 645, 647, 649 and 652.

The amendments being made in this rule are all either corrections of typographical errors, alignments of wording/titling/numbering with the FAR, re-numbering/relocating without substantive change, changes in delegated authority, incorporation of agency procedural guidance into the CFR, or other minor editorial adjustments without substantive change.

The changes being made by this rule are:

DOSAR citation	Description of change
	Correction of typographical errors
605.2	Correct ''Synopsis'' to ''Synopses.''
605.403	Correct ''members'' to ''Members.''
606.202	Correct ''alternate'' to ''alternative.''
619.202–70(n)(2)	Correct spelling—''recission'' to ''rescission.''
627.3	Correct ''Under'' to ''under.''
633.214–70(d)	Correct ''simplified acquisition limitation'' to ''simplified acquisition threshold.''
644.3	Correct misplaced apostrophe in the title.
	Renumber/relocate without substantive change
601.603–70	Redesignate as 601.601–70.
642.14	Redesignate as Subpart 647.3 and revise internal cites.
647.3	Add as new subpart (moved from subpart 642.14).
652.242–71	Clause redesignated as 652.247–70, remove 642.1406–2–70(a) and add 647.305–70 in its place.
652.242–72	Clause redesignated as 652.247–71, remove 642.1406–2–70(b) and add 647.305–71 in its place.
652.247–70	Editorial change. Clause moved from 652.242–71.
652.247–71	Editorial change. Clause moved from 652.242–72.
	Wording/title/numbering alignment with FAR
601.603	Add missing words, ''for contracting officers'' to the title.
604.13	Correct the title to read ''Personal Identity Verification.''
604.1300	Redesignate as 604.1301.
604.1301	Redesignate as section 604.1303.
604.1301–70	Redesignate as section 604.1303–70.
606.304(a)(2), 606.304–70, 606.370(b), 606.501(a), 606.501(b), 606.501–70, 606.570, 616.505(b)(5), 633.103(d)(4), 637.601, 652.206–70.	Change ''competition advocate'' and ''Competition Advocate'' to ''advocate for competition'' and ''Advocate for Competition,'' respectively.
606.370(a) & (b)	Remove ''41 U.S.C 253(c)(1),'' and insert ''41 U.S.C. 3304(a)(1)'' in its place.
609.404	Change title to SAM from EPLS, correct reference and change (c)(3) to (c)(6).
609.404–70	Revise last sentence and correct link to SAM vice EPLS.
616.505(b)(5)	Redesignate as 616.505(b)(8).
619.202–70(o)	Change threshold from ''$500,000'' to ''$650,000'' and from ''$1,000,000'' to ''$1,500,000.''
619.6	Replace ''Eligibility'' with ''Responsibility.''
619.803–71	Update the SAT to $150,000.
619.803–71(b)	Change CCR to SAM.
619.804–3–70	Update the SAT to $150,000.
619.805–2	Update the SAT to $150,000.
619.811–1(d)(1)	Remove ''41 U.S.C 253(c)(5),'' and insert ''41 U.S.C. 3304(a)(5)'' in its place.
619.811–1(d)(3)	Update the SAT to $150,000.
619.811–3(d)	Update the SAT to $150,000.
622.404	Correct title to align with FAR.
622.6	Correct title to align with FAR.
622.13	Correct title to align with FAR.
623.4	Correct title to align with FAR
624.202	Redesignate as 624.203.
625.1	Correct title to align with FAR.
625.2	Correct title to align with FAR.
627.2	Correct title to align with FAR.
627.203	Redesignate as 627.201 and correct the title.
627.203–6	Redesignate as 627.201–2, revise the title to ''Contract clauses'', designate para as (e), and correct FAR citation.
627.304–5	Redesignate as 627.304–4 and correct FAR citations.
628.1	Correct title to align with FAR.
628.2	Correct title to align with FAR.
631.205–6(g)(3)	Redesignate (g)(3) to (g)(6).
632.705	Redesignate as section 632.706.
632.705–70	Redesignate as section 632.706–70.
633.203(b)	Designate the text as (b).
633.214–70(a)	Remove ''Contract Disputes Act'' and insert ''Disputes statute (41 U.S.C. chapter 71)'' in its place.
636.202	Delete section (due to revocation of E.O. 13202, per FAC 2005–35).

DOSAR citation	Description of change
Add existing policy/procedure to CFR	
601.601–70(c)	Incorporate template for justifying use of ''notwithstanding'' authority.
601.602–3	Incorporate procedures for ratifications.
601.603–3(e)	Incorporate advice regarding authority to sign real property leases.
604.2	Incorporate contract distribution procedures.
604.8	Incorporate contract file procedures.
604.16	Incorporate contract solicitation/contract numbering guidelines.
604.70	Incorporate contract review procedures.
604.71	Incorporate procurement QA program procedures.
604.72	Incorporate procedures for secure procurement for controlled access areas.
605.207	Incorporate procedures for preparation and transmittal of synopses.
606.303–2	Incorporate content requirements for justifications and approvals.
607.102	Incorporate policy statement regarding acquisition planning.
607.103(d) and (j)	Incorporate requirement for written acquisition plans and approval level.
607.105	Incorporate requirements for content of acquisition plans.
607.5	Incorporate requirement for determination of not inherently governmental.
608.8	Incorporate statutory exemption for overseas printing and binding services.
608.70	Incorporate procedures for overseas acquisition of official vehicles.
613.302	Incorporate guidance on distribution and content of purchase orders.
613.303–1	Incorporate prohibition on use of BPAs for pest control services.
613.303–6	Incorporate procedures for internal reviews of BPAs.
613.307	Incorporate guidance on use of forms for purchase orders, delivery orders and BPAs.
615.4	Incorporate procedures for structured approach for profit/fee analysis.
616.1	Incorporate limitations on overseas contracting authority and guidance on use of model solicitations.
619.870	Incorporate administrative requirements related to 8(a) contracts.
628.305(c)	Remove guidance on DoS contract with insurance broker/carrier.
628.309–70(b)	Remove guidance on DoS contract with insurance broker/carrier.
628.309–70(c)	Remove guidance on DoS contract with insurance broker/carrier.
632.006–3	Incorporate requirements for reporting fraud and payment process.
633.203(c)	Incorporate change from GSBCA to CBCA.
633.214–70(c) & (c)(2)	Incorporate change from GSBCA to CBCA.
636.602–4	Incorporate guidance on selection authority for AE contracts.
636.606	Incorporate guidance on waiver from statutory fee limitation.
637.102(c)	Incorporate requirement for requiring activity justification for acquisition of services.
637.103(e)	Incorporate guidance to contracting officers regarding review of services acquisition requests.
637.104–71	Incorporate guidance on personal services agreements.
642.1503–70	Revise to recognize shift to CPARS.
649.111	Incorporate guidance on review and approval of termination settlements.
652.228–72/73/74	Remove clause on DoS contract with insurance broker/carrier.
652.228–70(d)	Remove paragraph on DoS contract with insurance broker/carrier.
652.228–71	Revise clause to reflect elimination of DoS contract with insurance broker/carrier.
652.236–71	Incorporate statutory changes.
652.236–72	Delete from para. (a) phrases ''and Section 406(c)'', '', and excludes . . . Libya'', and '', and whether they . . . in this solicitation''; and delete para (d)(9).
Changes in delegated authority	
601.601–70(b)(5)	Reflects increased authority.
601.601–70(a)(6)	Move to section 601.601–70(b)(8).
601.601–70(b)(8)	Revise subparagraph to reflect that RPSOs are not ''contracting activities.''
615.303(a)	Incorporate HCA authority to appoint other than a contracting officer as selection authority.
623.2	Incorporate designation of HCA as agency head.
Other editorial adjustments without substantive change	
601.106	Delete burden hours estimates.
601.301 (a)	Delete specific delegation letters.
601.302(b)	Editorial changes.
601.603–1	Correct URL for ACMP Handbook.
603.104–4(a)	Remove ''who is the agency head's designee,''
603.104–4(a)(6), 619.201(a), (b), (d)(18) and (f)(1). 619.202–70(e)(3), (j)(1), (j)(2), (k)(1), (k)(2), (m)(2), (m)(3), (m)(4), (n)(1), and (n)(2). 619.402–70. 619.506(b), 619.602–1, 619.705–4, 619.705–6–70(a) and (b), 619.803–70, 619.803–71(d) and 619.811–1(d)(4).	Change OSDBU office code.
604.1303–70	Revise to show proper clause title for 652.204–70.
606.302–6(c)(1)	Update E.O. to ''13526'' and replace the ''Office of Security Infrastructure'' with ''Security Infrastructure Directorate.''
606.303	Insert the title line ''606.303 Justifications.''
606.304(a)(2)	Editorial change to eliminate the need for future changes to thresholds.
606.304(d)	Delete text—merely repeats the FAR.

DOSAR citation	Description of change
609.402	Add new section, with designation of Procurement Executive as the suspending official and debarring official.
609.403	Remove the definitions of ''Debarring official'' and ''Suspending official.''
616.505(b)(5)	Delete ''contract.''
617.201, 617.201–70	Remove both sections entirely.
619.803–71(d)	Delete unnecessary terms and change A/SDBU to OSDBU.
619.811–1(d)(2), 619.811–1(d)(3), 619.811–1(e), 619.811–3(e), 619.812(d), 625.7002, 636.570(a)(3).	Remove the word ''DOSAR,'' per the citation convention at 601.303(c).
622.404–3	Correct DOSAR citation.
622.406–8(a)	Correct ''chief of the contracting activity'' to ''head of the contracting activity.''
623.302–70	Change ''with'' to ''that.''
627.303	Revise first sentence for clarity.
636.513(a)	Replace ''DOSAR'' with ''the clause at.''
637.103(a)(2)	Insert missing sub-paragraph identifier ''(a)(2).''
637.104	Designate the text as para (e).
637.104–70	Correct title.
645.107–70(a)(1)	Change ''and'' to ''or.''
645.107–70(a)(3)	Change '' . . . paragraphs (a)(1) or (2) of this . . .'' to ''. . . paragraph (a)(1) of this . . .''
649.106	Delete ''Termination'' and replace ''TCO'' to ''CO.''
652.204–70	Correct the title to ''Department of State Personal Identification Card Policy and Procedures'' and make editorial corrections to the body of the clause.
652.206–70	Editorial changes.
652.237–72	Correct the first sentence of paragraph (b).
652.245–71(c)(1)	Change ''and'' to ''or.''
652.245–71(c)(3)	Delete ''or (c)(2).''

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, in accordance with the ''good cause'' provision of 5 U.S.C. 553(b). The Department finds that, since the amendments in this rule are merely technical in nature or address the internal operating procedures of the agency, public comment is unnecessary. For the same reason, the effective date of this rulemaking is the date of publication, in accordance with 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This determination was based on the fact that the amendments in this rule are merely technical in nature, or consist of internal operating procedures of the agency, and they do not have any cost or administrative impact on offerors or contractors. Thus, it was concluded that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets. This determination was based on the fact that the amendments in this rule are merely technical in nature or address the internal operating procedures of the agency. The rule does not have any cost or administrative impact on offerors or contractors.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866.

In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of updating this rule outweigh any costs, which the Department assesses to be minimal.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the

requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The rule imposes no new or revised information collections under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 601, 603, 604, 605, 606, 607, 608, 609, 613, 615, 616, 617, 619, 622, 623, 624, 625, 627, 628, 631, 632, 633, 636, 637, 642, 644, 645, 647, 649, and 652

Administrative practice and procedure, Government procurement.

For the reasons stated in the preamble, the Department of State amends 48 CFR chapter 6 as follows:

■ 1. The authority citation for 48 CFR parts 601, 603, 604, 605, 606, 607, 609, 613, 615, 616, 617, 619, 622, 623, 624, 625, 627, 628, 631, 632, 633, 636, 637, 642, 644, 645, 647, 649 and 652 is revised to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION SYSTEM

■ 2. Section 601.106 is revised to read as follows:

601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050. The information and recordkeeping requirements for Form DS–4053, *Department of State Mentor-Protégé Program Application,* have been approved by OMB under OMB Control Number 1405–0161.

■ 3. In section 601.301, paragraph (a) is revised to read as follows:

601.301 Policy.

(a) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301. The Assistant Secretary of State for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

* * * * *

■ 4. In section 601.302, revise paragraph (b) to read as follows:

601.302 Limitations.

* * * * *

(b) At posts where Joint Administrative Offices have been formed and DOS is the procurement agency, the FAR and DOSAR apply to all administrative and technical support acquisitions.

601.603–70 [Redesignated as 601.601–70]

■ 5. Redesignate section 601.603–70 as section 601.601–70.

■ 6. Revise newly redesignated section 601.601–70 as follows:
■ a. Revise paragraph (b)(5);
■ b. Redesignate paragraph (a)(6) as paragraph (b)(8);
■ c. Revise newly redesignated (b)(8) and
■ d. Add paragraph (c).

The revisions and addition read as follows:

601.601–70 Delegations of authority.

* * * * *

(b) * * *

(5) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR part 13, to enter into and administer contracts over the simplified acquisition threshold but not exceeding $500,000 for non-commercial item acquisitions; up to $6.5 million for the acquisition of commercial items using the simplified acquisition procedures under the Test Program of FAR subpart 13.5; orders against existing contracts up to the maximum ordering threshold or limitation and personal services contracts pursuant to the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation (AIDAR), including any amendments thereto. INL follows the AIDAR guidance for doing personal service contracts. All other contracting actions follow the DOSAR and DoS regulations. These authorities extend to any acquisition performed by any Department of State contracting activity on behalf of INL.

* * * * *

(8) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) at the following locations:

(i) RPSO Frankfurt in conjunction with Consulate General Frankfurt; and

(ii) RPSO Florida in conjunction with the Florida Regional Center.

(c) *Execution of delegated authority.* (1) Whenever the contracting officer makes use of the various statutory authorities available to the Department to waive the application of the Federal Acquisition Regulation or laws governing acquisition, such as those provided in the Foreign Assistance Act (22 U.S.C. 2291) or the Foreign Service Buildings Act (22 U.S.C. 294), a written determination of the basis for using the authority must be prepared and included in the file.

(2) If the statute or current practice of the requiring office does not specify a particular format, use the following format.

DETERMINATION FOR USE OF AUTHORITY TO WAIVE ____[fill in what is being waived]

SUBJECT: [State title of program or project]
DESCRIPTION OF REQUIREMENT: [Briefly describe what is being acquired]
STATUTORY AUTHORITY: [Cite specific statute, such as 22 U.S.C. 2291(a)(4) for INL, and provide quotation from the law that conveys authority for the waiver at issue]
SCOPE OF WAIVER: [Describe what is being waived, such as (but not limited to) the Federal Acquisition Regulation (FAR) in its entirety, the Competition in Contracting Act as implemented in FAR Parts 5 and 6, or FAR Part 32 limitation on advance payments, etc.; also identify the individual acquisition or class of acquisitions for which the waiver is being sought.]
JUSTIFICATION: [Describe the need to use the authority and the anticipated impact of not doing so; discuss alternatives considered, if any]
CONCURRENCE:

_____
Contracting Officer

_____
Date

_____
Legal Advisor

_____
Date

_____
APPROVAL/SIGNATURE:

_____
Approving Official

_____
Date

(3) The determination may be made for an individual acquisition or on a class basis, as appropriate. The Contracting Officer must ensure that the proper official makes the determination in question. There may already be a Department of State delegation of

authority to a specific individual to make the determination.

■ 7. Add sections 601.602–3 and 601.602–3–70 as follows:

601.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that could result in disciplinary action against the transgressor, *e.g.,* withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action.

(2)(i) Unauthorized commitments not exceeding $1,000. The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized commitments not exceeding $1,000, including unauthorized commitments from other agencies where a DOS employee serves as the contracting officer for that action. The head of the contracting activity may refer any actions not exceeding $1,000 to the DOS Procurement Executive for ratification if he or she so chooses.

(ii) Unauthorized commitments exceeding $1,000. All DOS unauthorized commitments in excess of $1,000 shall be submitted to the DOS Procurement Executive for ratification. Unauthorized commitments in excess of $1,000 from other agencies may be referred to the other agency's representative at post for resolution in accordance with that agency's ratification process.

(3) *Claims.* Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR subpart 33.2 and subpart 633.2.

(4) *Disciplinary action.* The Procurement Executive may refer egregious cases of unauthorized commitments to HR/ER for possible disciplinary action in accordance with 3 FAM 4370 or 3 FAM 4540. Examples might include repeated unauthorized commitments knowingly made by an employee; failure to take responsibility for a deliberate unauthorized commitment; or similar reasons. The Procurement Executive may revoke the appointment certificate of any contracting officer who makes an unauthorized commitment. The Procurement Executive may direct a contracting officer to revoke the appointment memorandum of a Contracting Officer's Representative or Government Technical Monitor who makes an unauthorized commitment.

601.602–3–70 Procedures.

(a)(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the contracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed; a statement justifying a sole source acquisition (Justification for Other Than Full and Open Competition) if the unauthorized commitment exceeds $100,000; why and how the vendor was selected; a list of other sources considered; a description of work or products; a statement regarding the status of performance; an estimated or agreed price; certified funding citations; a statement as to why he/she should not be personally liable for the cost, *e.g.,* a public purpose was served and no personal benefit was received; a statement as to whether the individual has ever been responsible for any other unauthorized commitments in the Department of State; and, a statement as to the number of unauthorized commitments processed by the responsible office within the last three calendar years and the circumstances surrounding each of these actions.

(2) When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office that employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(4) This statement shall be cleared by the Executive Director of the Bureau that employs (or employed) the person who made the unauthorized commitment.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–3(c)(1) and (c)(3) through (6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding $1,000, the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds $1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over $1,000) or to the contracting officer (if under $1,000) with a written explanation for the decision and a recommendation for disposition of the action.

■ 8. Revise the section 601.603 heading to read as follows:

601.603 Selection, appointment, and termination of appointment for contracting officers.

* * * * *

601.603–1 [Amended]

■ 9. In section 601.603–1, remove ''*http://foia.state.gov/REGS/search.asp*'' and add ''*http://www.state.gov/m/a/dir/regs/fah/14fah03/index.htm*'' in its place.

■ 10. In section 601.603–3, add paragraph (e) to read as follows:

601.603–3 Appointment.

* * * * *

(e) *Real property leases.* The FAR and DOSAR do not apply to leases of real

property. A contracting officer certificate of appointment is not required. Authority to sign real property leases is as follows:

(1) *Domestic real property leases.* The General Services Administration has delegated domestic leasing authority to the Department of State's Office of Real Property Management (A/OPR/RPM). This delegation is accomplished on a case-by-case basis.

(2) *Real property leases abroad.* Authority to sign real property leases abroad is held by the Director/Chief Operating Officer (DIR/COO) of the Bureau of Overseas Buildings Operations (OBO), through the Secretary of State, under the Foreign Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*). Leases at post may be executed by the General Services Officer or by other post administrative personnel as authorized by OBO.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

603.104–4 [Amended]

■ 11. Amend section 603.104–4 as follows:

■ a. In paragraph (a), remove ''who is the agency head's designee''; and

■ b. In paragraph (a)(6), remove ''A/SDBU'' and add in its place ''OSDBU''.

PART 604—ADMINISTRATIVE MATTERS

■ 12. Add subpart 604.2, consisting of section 604.202, to read as follows:

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, *e.g.,* the Contracting Officer's Representative; the requirements office; the Post Occupational Safety and Health Officer (POSHO); the Despatch Agent or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; the financial management office; and each post or office where the contract shall be performed. Where required by the laws of a foreign country, overseas posts shall retain the original copy of the contract or modification awarded by a domestic contracting activity for performance overseas. The contracting officer shall send copies of contracts and modifications awarded as small business or 8(a) set-asides to OSDBU.

■ 13. Add subpart 604.8 to read as follows:

Subpart 604.8—Government Contract Files

Subpart 604.8—Government Contract Files

604.802 Contract files.

Heads of contracting activities shall maintain standard procedures to conform to FAR 4.802 for file location and maintenance.

(f) *Electronic files.* Offices may maintain files in electronic media provided all documentation is maintained as required by FAR subpart 4.8. Electronic files dispersed in multiple locations, or maintained with no naming convention, do not constitute adequate electronic records.

604.803 Contents of contract files.

604.803–70 Contract file table of contents.

(a) It is the Department's policy that all contracts, regardless of dollar value, be properly documented so as to provide a complete record of: pre-solicitation activities; the solicitation, evaluation, and award process; and, the administration of the contract through closeout.

(b) All domestic contracting activities awarding contracts using other than simplified acquisition procedures shall use the format of Form DS–1930, *Domestic Contract File Table of Contents,* and all overseas contracting activities shall use the format of Form DS–1929, *Overseas Contract File Table of Contents,* unless an alternate format has been approved by A/OPE.

(c) Each table of contents is organized in chronological order, with six separate sections for each of the six parts of the file folder (from Section I, Pre-Solicitation, through Section VI, Contract and Modifications/Contract Closeout). Alternatively, for ease of contract administration, offices may choose to organize contract files with Section VI of the table of contents at the beginning of the folder, with Section I at the back of the folder.

(d) The format of Form DS–1928, *Contract Administration File Table of Contents,* may be used by those offices that prefer to have a separate file folder for contract modifications or delivery/task orders.

604.804 Closeout of contract files.

604.804–70 Contract closeout procedures.

(a) This section sets forth procedures for closing out contracts awarded using other than simplified acquisition procedures by contracting activities and requirements offices. It is the Department's policy to close out contracts in the time frames prescribed by FAR Part 4.

(b) Contracting activities are responsible for initiating each contract closeout. Contracting activities and requirements offices are jointly responsible for timely compliance with required contract closeout procedures.

(c) The contract closeout process shall begin as soon as possible after the contract is physically completed, which means that the contractor has delivered the required supplies and the Government has inspected and accepted them, or the contractor has performed and the Government has accepted all services required by the contract, and the base period and any option periods exercised have expired.

(d) *Specific procedures.* The normal steps for closing out a physically completed contract shall be as follows. These steps are summarized in the Contract Closeout Checklist, which shall be completed by the contracting officer and included in the contract file. The contracting officer shall indicate any items that are not applicable (*e.g.,* patent reports, royalty reports, etc.).

(1) The contracting officer shall verify that all work under the contract has been completed; obtain the COR's assessment of the contractor's performance; and conduct an initial funds status review, *i.e.,* determine if the contract has excess funds that should be deobligated by contract modification. Contracting officers shall send a cover memo to the COR, to which should be attached the COR Completion Certificate, the applicable performance evaluation form (depending on whether the contract is for construction (SF–1420), architect-engineering services (SF–1421), or other supplies or services (DS–1771, *Contractor Evaluation Statement*)); and, a final payment and closeout memorandum. Contracting officers may require CORs to input past performance data directly into the Contractor Performance Assessment Reporting System (CPARS) as opposed to completing a paper evaluation form (see 642.1503–70).

(2) After receipt of the COR's response, and the contractor's release, the contracting officer shall send a final payment memo to the office responsible for payment of invoices/vouchers.

(3) An audit is required for cost-reimbursement contracts over $550,000, unless available data are considered adequate for a reasonableness determination, in which case the

contract file shall be documented with the appropriate rationale. Requests for audits shall be submitted through the Office of the Inspector General. Cost-reimbursement contracts may be closed after receipt of the audit report and resolution of any issues raised. Quick closeout procedures may be followed, as prescribed in FAR 42.708. The contracting officer may request an audit of any contract, if warranted; however, audits should not be requested if the cost of the audit is likely to exceed potential cost recovery, except where fraud or misrepresentation is suspected.

(4) The contracting officer shall send a letter to the contractor requesting release of claims, using the appropriate format. In addition, a Contractor Assignment Letter is required for certain contracts. To determine which format is applicable, contracting officers shall refer to the Payments clause in the contract.

(5) The contracting officer shall reconcile the contract obligations and contractor payments, and then deobligate any excess funds remaining in the contract by issuing a contract modification on a SF–30. Close coordination with the finance office is necessary in order to receive the required information to perform a funds status review.

(6) The contracting officer shall verify that all relevant documentation is included in the contract file (see 604.803–70).

(7) Upon completion of 8(a) contracts, the contracting officer shall complete the Small Business Administration's Contract Completion Form within ten (10) days of contract completion. One copy shall be forwarded to SBA, one copy shall be retained in the contract file, and one copy shall be sent to OSDBU.

(8) For classified contracts, the contractor is required to return to the Department all classified material received or generated under the contract, or to destroy all classified material, unless retention is requested and authorized by the Department. The contracting officer shall notify DS/PRD/IN of contract completion, final delivery of goods or services or the termination of the classified contract. The contracting officer shall ensure that any classified material contained in the contract file is properly marked and accounted for.

(9) Closeout documents are available on the Intranet at the A/OPE Web site.

(e) Contract files that have been closed out shall be retained in accordance with the schedule in FAR 4.805.

(f) Contract files for contracts using simplified acquisition procedures are considered closed when the contracting officer receives evidence of property/services and final payment. Disposal of such files shall be as prescribed in FAR 4.805.

604.805 Storage, handling, and disposal of contract files.

Heads of contracting activities shall prescribe procedures for handling, storing, and disposing of contract files. Additional guidance on records management may be found in 5 FAM.

Subpart 604.13 Personal Identity Verification

■ 14. Revise the subpart 604.13 heading to read as set forth above.

604.1300 and 604.1301 [Redesignated as 604.1301 and 604.1303]

■ 15. Redesignate sections 604.1300 and 604.1301 as sections 604.1301 and 604.1303, respectively.

604.1301–70 [Redesignated as 604.1303–70]

■ 16. Redesignate section 604.1301–70 as 604.1303–70 and revise it to read as follows:

604.1303–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.204–70, Department of State Personal Identification Card Policy and Procedures, in solicitations and contracts that require contractor employees to perform on-site at a DOS location and/or that require contractor employees to have access to DOS information systems.

■ 17. Add subparts 604.16, 604.70, 604.71, and 604.72 to read as follows:

Subpart 604.16—Unique Procurement Instrument Identifiers

604.1601 Policy.

(c)(1) *Procurement Instrument Identifier (PIID).* Uniform numbers shall be assigned to all DOS procurement instruments, domestic and overseas. The numbering system applies to all contracts, purchase orders, and other related instruments, including solicitation documents and delivery orders. This includes instruments executed by DOS contracting officers on behalf of other federal agencies. It does not include requisitions submitted to a contracting activity, or to instruments awarded under Federal assistance arrangements, *e.g.,* grants, cooperative agreements, and loans. Numbers shall be placed in appropriate spaces on government forms and appear on all documentation intended to support official contract files.

(2) *Responsibility.* Heads of contracting activities are responsible for enforcing compliance with the uniform numbering system. Heads of contracting activities shall develop and maintain a system for assigning and recording contract numbers that conforms to this section.

(3) *Instrument identification numbers.* A 13-character ''alpha-numeric'' designator shall be assigned to all DOS procurement instruments. Positions (beginning at the left) one through six shall identify the purchasing office; positions seven and eight, the fiscal year in which the number is assigned; position nine, a symbol designating a type of procurement instrument; and positions ten through thirteen, a four-position serial number.

(i) The first six positions shall commence with ''S'' to designate a DOS-issued contract. The remaining five characters shall identify the activity preparing the instrument. Domestic and overseas contracting activities shall assign the character codes using the five-digit designator from the listing at *http://www.aopeprocurement reports.com/ReportServer_OPEMS2008/Pages/ReportViewer.aspx?%2fDOS Report%2fPostCode List&rs:Command=Render.* DOS organizations not listed shall contact A/OPE for assignment of an office code.

(ii) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned.

(iii) The ninth position shall be a capital letter assigned to indicate the type of instrument, as follows:

(A) Blanket Purchase Agreement	A
(B) Invitation for Bids	B
(C) Contract (includes letter contracts, contracts incorporating basic agreements and basic ordering agreements)	C
(D) Indefinite Delivery Contract	D
(E) Reserved. Do not use	E
(F) Delivery/Task Order (includes orders placed against all U.S. Government contracts, whether issued by DOS or another agency)	F
(G) Basic Ordering Agreement	G
(H) Basic Agreement	H
(I) Request for Information/Comment	I
(J) Reserved. Do not use	J
(K) Reserved. Do not use	K
(L) Orders under Blanket Purchase Agreements	L
(M) Purchase Order	M
(N) Reserved. Do not use	N
(O) Do not use this letter	O
(P) Personal services contract	P
(Q) Request for Quotations	Q
(R) Request for Proposals	R

(iv)(A) The tenth through thirteenth positions shall be the serial number for the instrument. A separate set of serial numbers may be used for any type of instrument listed in paragraph (c)(3)(iii) of this section. Each series of numbers for the same activity shall begin with the number 0001 at the start of each fiscal year.

(v)(A) The following illustrates a properly configured contract number for the first number assigned to a fiscal year 2015 contract awarded by the Department of State, Embassy Ottawa: SCA525–15–C–0001

(B) Use of the dashes to separate the individual elements of the series is optional; however, when reporting individual contract actions to the Federal Procurement Data System (see FAR subpart 6.4), dashes shall not be used.

(C) Contracting activities are authorized to use the first digit of the serial number (position 10) to establish discrete series of numbers. For example, the ''1000'' series may be reserved for Bureau of Consular Affairs requirements (domestic), or the ''1000'' series may be reserved for Economic section requirements (overseas). Use of discrete series is appropriate generally for activities handling large numbers of transactions and can provide useful management information.

(4) *Solicitation amendment and contract modification numbers.* Solicitation amendments are to be numbered sequentially, beginning with the alpha designator ''A,'' *e.g.,* A001. Contract modifications shall also be numbered sequentially, beginning with the alpha designator ''M,'' *e.g.,* M001.

Subpart 604.70—Contract Review

Subpart 604.70—Contract Review

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

604.7002 Procedures.

(a) *Overseas contracting activities.* (1) A/OPE reviews all procurements that exceed the warrant levels of post contracting officers. Post contracting officers may request A/OPE review and assistance for transactions below this level.

(2) *Personal services agreements.* Prior A/OPE approval is not applicable to personal services agreements, as they are not subject to procurement statute and regulation.

(b) *Domestic contracting activities and Regional Procurement Support Offices.* A/OPE reviews domestic acquisitions as described in the A/LM/AQM Quality Assurance Plan.

(c) *Delegation or waiver.* The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

Subpart 604.71—Procurement Quality Assurance Program

Subpart 604.71—Procurement Quality Assurance Program

604.7101 Purpose.

A procurement quality assurance program is essential to the effective operation of each domestic contracting activity. Each domestic contracting activity and RPSO shall develop a quality assurance plan for review and approval of contract actions to ensure that all requirements of law, regulation, Departmental policy, and sound procurement practices are met, the taxpayer's interests are adequately protected, and the Department's mission is well-served. Post quality assurance includes A/OPE review of actions exceeding warrant levels and Staff Assistance Visits (SAVs).

604.7102 Contracting activity reviews.

604.7102–1 Peer reviews.

All contract actions above the simplified acquisition threshold shall be independently reviewed by at least one other qualified contracting professional. This includes solicitations, contracts, contract modifications, and delivery/task orders. This requirement is waived for overseas posts and RPSOs that have only one qualified contracting professional.

604.7102–2 Form and scope of review

(a) The review shall focus on both compliance with statutory/regulatory requirements as well as good contracting practices. Reviews shall be included in the official contract file along with documentation regarding the actions taken in response to the review.

(b) Reviews should be limited in time to prevent unnecessary procurement lead-time, but thorough in scope, considering all documents in the contract file and all relevant contracting issues. Checklists may be used to facilitate a thorough review, as appropriate.

604.7102–3 Approval.

The solicitation, contract, or contract modification being reviewed shall not be issued until all review comments requiring corrective action are satisfactorily resolved. Waivers shall not be granted except in unusual circumstances, and shall be approved in advance by the head of the contracting activity.

604.7103 Review by Assistant Legal Adviser for Buildings and Acquisitions (L/BA).

(a) L/BA shall review solicitations, contract awards, and delivery orders against GSA Federal Supply Schedule contracts exceeding $1 million that are generated by domestic contracting activities, including RPSOs. L/BA shall also review domestic contract modifications exceeding $1 million if the scope or ceiling of the contract may be in question. This review is not required for modifications exercising priced options, incremental funding modifications, and similar actions that do not involve questions regarding the scope or ceiling of the contract.

(b) L/BA shall also review and approve any nonpersonal services contract, purchase order or blanket purchase agreement to be awarded to an individual who is a U.S. citizen.

Subpart 604.72—Secure Procurement for Controlled Access Areas

604.7201 Policy.

A/LM issues procedures for the acquisition of secure items that are needed by overseas posts. Posts shall contact A/LM/AQM regarding secure procurement matters, and shall consult the periodic guidance issued by A/LM on this subject.

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopses of Proposed Contract Actions

■ 18. Revise the subpart 605.2 heading to read as set forth above.

■ 19. Add section 605.207 to read as follows:

605.207 Preparation and transmittal of synopses.

(a)(1) Contracting officers at overseas posts shall submit notices of proposed contract actions to A/OPE for electronic transmittal to the GPE. Alternately, posts may obtain a user ID and password that allows direct registration and issuance of the notice in the GPE. Posts should contact A/OPE for assistance in obtaining the ID and password if they choose to directly input the notice information.

■ 20. Revise the heading of section 605.403 to read as follows:

605.403 Requests from Members of Congress.

* * * * *

PART 606—COMPETITION REQUIREMENTS

■ 21. Revise the heading of section 606.202 to read as follows:

606.202 Establishing or maintaining alternative sources.

* * * * *

606.302–6 [Amended]

■ 22. In section 606.302–6, in paragraph (c)(1) introductory text, remove ''12958'' and add in its place ''13526'' in two places and remove ''Office of Security Infrastructure'' and add in its place ''Security Infrastructure Directorate''.

■ 23A. Add section 606.303 heading to read as follows:

606.303 Justifications.

* * * * *

■ 23B. Add section 606.303–2 to read as follows:

606.303–2 Content.

(a) All justifications shall address the requirements of FAR 6.303–2. A sample Justification for Other than Full and Open Competition for acquisitions by both overseas posts and domestic contracting activities is available on the A/OPE Intranet Web site. Use of the format for overseas posts is mandatory; domestic contracting activities may develop their own format based on the sample. In addition, sample formats are provided for posts to justify motor vehicle and household appliance purchases made in accordance with the Department's standardization program (see 606.370(b)). All applicable approvals are as indicated on the formats. The justification must be completed and signed by the appropriate individuals.

(b)(9) All justifications for acquisitions exceeding $5 million shall include a copy of the acquisition plan, as required by 607.103(d).

606.304 [Amended]

■ 24. Amend section 606.304 as follows:

■ a. In paragraph (a)(2), remove ''over $550,000 but not exceeding $11.5 million'' and add in its place ''within the dollar range set forth in FAR 6.304(a)(2)'' and remove ''competition advocate'' and ''Competition Advocate'' and add in their place ''advocate for competition'' and ''Advocate for Competition'', respectively; and

■ b. Remove paragraph (d).

606.304–70 [Amended]

■ 25. In section 606.304–70, remove ''Competition Advocate'' and add in its place ''Advocate for Competition''.

606.370 [Amended]

■ 26. In section 606.370, in paragraphs (a) and (b), remove ''41 U.S.C 253(c)(1),'' and add in its place ''41 U.S.C. 3304(a)(1)'' and in two places in paragraph (b), remove ''competition advocate'' and add in its place ''advocate for competition''.

606.501 [Amended]

■ 27A. In section 606.501, in paragraphs (a) and (b), remove ''Competition Advocate'' and add in its place ''Advocate for Competition'' and in three places in paragraph (b), remove ''competition advocate'' and add in its place ''advocate for competition''.

606.501–70 [Amended]

■ 27B. In section 606.501–70, remove ''competition advocate'' and add in its place ''advocate for competition''.

606.570 [Amended]

■ 28. In section 606.570, remove ''Competition Advocate'' and add in its place ''Advocate for Competition''.

PART 607—ACQUISITION PLANNING

■ 29. Add section 607.102 to read as follows:

607.102 Policy.

It is the Department's policy that every acquisition be conducted and the contract file documented in conformance with the requirements for acquisition planning pursuant to FAR part 7.

■ 30. In § 607.103, add paragraphs (d) and (j) to read as follows:

607.103 Agency-head responsibilities.

* * * * *

(d) Domestic requirements offices must develop a formal, written acquisition plan for all acquisitions exceeding $5 million. This includes base period plus all option years. The plan shall address the content requirements of FAR 7.105.

(j) Acquisition plans for service contracts with an anticipated annual expenditure exceeding $25 million must be approved by the bureau Assistant Secretary.

■ 31. Add section 607.105 to read as follows:

607.105 Contents of written acquisition plans.

(b)(10) Acquisition Plans for support of contract administration and other tasks closely related to inherently governmental functions must include a determination that the services being requested are not inherently governmental and a risk mitigation strategy. Procurement Information Bulletin (PIB) 2011–11, Attachment 1, lists functions requiring additional oversight and potential mitigation strategies.

(b)(19) Acquisition Plans must include planning for contract administration. Planning shall be developed by the bureau technical program office and should consider an initial assessment of resources required for contractor oversight, support, travel and communications. Planning should take into account the need for multiple technical monitors based on geographic dispersion and multiple technical disciplines. Program offices must identify financial and other resources that are reserved for implementation of contract administration.

■ 32. Add subpart 607.5, consisting of section 607.503, to read as follows:

Subpart 607.5—Inherently Governmental Functions

607.503 Policy.

(e) Requirements offices shall provide to the contracting officer a written determination that none of the functions to be performed are inherently governmental. This determination shall be included with the procurement request package, which is transmitted to the contracting officer to initiate an action. The Form DS–4208 may be used to meet this requirement. The contracting officer shall obtain review from the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) of any request package that the contracting officer determines raises substantial questions as to the performance of inherently governmental functions. Disagreements regarding the determination shall be resolved by the head of the contracting activity.

■ 33. Add part 608 to read as follows:

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.8—Acquisition of Printing and Related Services

608.802 Policy.

Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities

608.7001 Definitions.
608.7002 Acquisitions for the Department of State.
608.7003 Acquisitions on behalf of other Federal agencies.

Authority: 22 U.S.C. 2651a, 41 U.S.C. 1702 and 48 CFR chapter 1.

Subpart 608.8—Acquisition of Printing and Related Services

608.802 Policy.

(a)(4) In accordance with Section 2(a) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669), overseas printing and binding services may be acquired from sources other than the Government Printing Office.

(b) The DOS central printing authority is the Director, Global Publishing Solutions under the Deputy Assistant Secretary for Global Information Services.

Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities

608.7001 Definitions.

Official vehicle means a U.S. Government-owned or leased motor vehicle that is fueled by petroleum or electric batteries, has a minimum of four wheels, and is designed primarily for use on highways, such as sedans, station wagons, buses, carryalls, and trucks.

608.7002 Acquisitions for the Department of State.

(a) A/LM funds and controls the acquisition of official vehicles required by overseas posts. Accordingly, any acquisition of official vehicles by overseas contracting activities must be approved and authorized in advance by A/LM.

(b) GSA is the mandatory source for U.S. manufactured vehicles acquired in the United States. Purchase requests are submitted by A/LM to GSA on behalf of overseas posts. Overseas posts shall use U.S. manufactured vehicles unless justified as described in paragraph (c) of this section.

(c) Overseas posts may acquire non-U.S. manufactured vehicles only in special cases that are approved in advance. Requests to purchase non-U.S. manufactured vehicles may be justified under the conditions specified in 6 FAM 228.9–3(B)(c). The request shall be submitted to A/LM for approval. If approval is granted to acquire non-U.S. manufactured vehicles from the local economy, overseas posts shall follow the normal procedures in the FAR.

(d) Standardization of motor vehicles shall follow the procedures in 606.370.

608.7003 Acquisitions on behalf of other Federal agencies.

(a) *Acquisition of U.S. manufactured vehicles.* (1) GSA is the mandatory source for official vehicles purchased in the United States for all Federal agencies. Non-DOS agencies must have a waiver from GSA that allows them to acquire official vehicles from sources in the United States other than GSA, in accordance with the Federal Property Management Regulation, 41 CFR 101–38.104.

(2) DOS overseas contracting activities shall not obtain GSA waivers or acquire vehicles through GSA or directly from sources in the United States on behalf of other agencies. Requests to acquire vehicles in this manner shall be returned to the requesting agency without action, and the agency instructed to use its own contracting personnel or GSA for this purpose.

(b) *Acquisition from non-U.S. sources.* No GSA waiver is required for official vehicles purchased outside the United States from non-U.S. sources. Normal acquisition procedures shall be followed. However, contracting officers should be aware that statutory ceilings apply to the acquisition of passenger vehicles (*i.e.,* sedans and station wagons) (see P.L. 103–329), so other agencies shall not request that posts acquire vehicles without providing an analysis of how the price compares with this ceiling.

PART 609—CONTRACTOR QUALIFICATIONS

■ 34. Add section 609.402 to subpart 609.4 to read as follows:

609.402 Policy.

The Procurement Executive is the agency head's designee to be the debarring official and the suspending official.

609.403 [Amended]

■ 35. In section 609.403, remove the definitions of ''Debarring official'' and ''Suspending official.''

■ 36. Revise sections 609.404 and 609.404–70 to read as follows:

609.404 System for Award Management Exclusions.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (6). The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated, without power of redelegation, to the head of the contracting activity.

609.404–70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at *http://www.treas.gov/ofac/.* Contracting officers shall consult this list prior to award for any dollar amount. This list is included in searches conducted on the System for Award Management (SAM) Web site at *https://www.sam.gov.*

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

■ 37. Add sections 613.302, 613.302–1, 613.302–5, and 613.302–5–70 to read as follows:

613.302 Purchase orders.

613.302–1 General.

(d) The contracting officer shall distribute copies of each purchase order in conformance with subpart 604.2.

613.302–5 Clauses.

The contracting officer shall ensure that the appropriate clauses prescribed in FAR part 13 are added or incorporated by reference on all purchase orders with both U.S. and foreign vendors.

613.302–5–70 DOSAR clauses.

In addition to the appropriate FAR clauses, each purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. The DOSAR clauses may be incorporated by reference.

■ 38. Add section 613.303–1 to read as follows:

613.303–1 General.

BPAs shall not be used to acquire pest control services.

■ 39. Add section 613.303–6 to read as follows:

613.303–6 Review procedures.

(a) Contracting officers shall conduct an annual internal review to ensure that authorized BPA procedures are being followed and report the results of the review, including needed corrective action, to the head of the contracting activity.

■ 40. Add sections 613.307 and 613.307–70 as follows:

613.307 Forms.

(b)(2) Other than commercial items. The OF–347 shall be mandatory for use by domestic contracting activities for issuing purchase orders, delivery orders, and BPAs, unless ordering against another Federal agency contract that stipulates a different form (*e.g.,* DD–1155, Order for Supplies or Services:) or, unless the Procurement Executive has approved another form. The OF–347 may also be used as a voucher. In lieu of the OF–347, DOS overseas contracting activities may use the DS–2076, Purchase Order, Receiving Report, and Voucher; and DS–2077, Continuation Sheet. Contracting activities may use the Optional Form (OF) 127, Receiving and Inspection Report, for documenting receipt and inspection.

613.307–70 File folders for purchase orders, delivery orders, blanket purchase agreements, and purchase card transactions.

Contracting officers shall use Forms DS–1918, Purchase Order File; DS–1919, Delivery Order File; DS–1920, Blanket Purchase Agreement (BPA) File; and DS–3014, Purchase Card Transaction File (Actions Exceeding $3,000 Through $25,000), to record relevant data and document those acquisitions, respectively.

PART 615—CONTRACTING BY NEGOTIATION

■ 41. In section 615.303, add a sentence to the end of paragraph (a) to read as follows:

615.303 Responsibilities.

(a) * * * The HCA is delegated authority to appoint someone other than the contracting officer as source selection authority for a particular acquisition.

■ 42. Add subpart 615.4 to read as follows:

Subpart 615.4—Contract Pricing

Subpart 615.4—Contract Pricing

615.404 Proposal analysis.

615.404–4 Profit.

(b)(2) It is the Department's policy to use the structured approach for profit/fee analysis contained in the Department of Health and Human Services' (HHS) FAR Supplement (see 48 CFR chapter 3), for acquisitions awarded by domestic contracting activities and RPSOs. This document may be accessed from A/OPE's Acquisition Web site (see 601.105–3). Contracting officers shall follow these procedures. HHS Form 674, *Structured Approach Profit/Fee Objective,* or an equivalent form, may be used to document the profit/fee analysis. If more than one pre-negotiation cost objective is developed (*e.g.,* high and low), a separate form should be completed for each. The contracting officer shall ensure that a written explanation is attached to the form justifying the weights chosen for each cost category or factor. This approach considers the factors outlined in FAR 15.404–4(d).

(c)(4)(i)(B) In accordance with a delegation from OBO, overseas posts may request a waiver from A/OPE if post is unable to negotiate a price for architect-engineer services within the six percent price limitation. To obtain a waiver, the contracting officer must send the following information to A/OPE:

(1) Description of project;

(2) Estimated dollar amount, with cost breakdown; and,

(3) Description of negotiation efforts.

PART 616—TYPES OF CONTRACTS

■ 43. Add subpart 616.1 as follows:

Subpart 616.1—Selecting Contract Types

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102–70 Overseas posts.

Pursuant to 601.601–70(a)(1)(i), no authority is delegated to overseas posts to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts, unless the Procurement Executive's approval is obtained. Such requests shall be submitted by the head of the contracting activity on a case-by-case basis.

616.103 Negotiating contract types.

(d) The Procurement Executive has issued class determinations for the following categories of contracts awarded by overseas contracting activities: painting, vehicle insurance, vehicle rental, alarm installation, cell phone rental, janitorial, hotel and cost per copy services; gardening and maintenance services; and packing/shipping services. Copies may be found in the Overseas Contracting and Simplified Acquisition Guidebook. Contracting officers need not develop their own determinations provided that they use A/OPE's model solicitations. Contracting officers shall place a copy of the appropriate determination in the contract file.

616.505 [Amended]

■ 44. In section 616.505, in paragraph (b)(5), remove the word ''contract'' and remove ''Competition Advocate'' and add in its place ''Advocate for Competition''.

PART 617—SPECIAL CONTRACTING METHODS

617.201 and 617.201–70 [Removed]

■ 45. Remove sections 617.201 and 617.201–70.

PART 619—SMALL BUSINESS PROGRAMS

619.201 [Amended]

■ 46. In section 619.201, in paragraphs (a), (b), (d)(18), and (f)(1), remove ''A/SDBU'' and add in its place ''OSDBU'';

619.202–70 [Amended]

■ 47. Amend 619.202–70 as follows:

■ a. In paragraphs (e)(3), (j)(1), (j)(2), (k)(1), (k)(2), (m)(2), (m)(3), (m)(4), (n)(1) and (n)(2), remove ''A/SDBU'' and add in its place ''OSDBU'';

■ b. In paragraph (n)(2), revise the word ''recission'' to read ''rescission''; and

■ c. In paragraph (o)(1), remove the phrase ''exceeding $500,000'' and add in its place ''exceeding $650,000'' and remove ''$1,000,000'' and add in its place ''$1,500,000''.

619.402–70 [Amended]

■ 48. In section 619.402–70, remove ''A/SDBU'' and add in its place ''OSDBU''.

619.506 [Amended]

■ 49. In section 619.506, in paragraph (b), remove ''A/SDBU'' and add in its place ''OSDBU''.

Subpart 619.6—Certificates of Competency and Determinations of Responsibility

■ 50. Revise the subpart 619.6 heading as set forth above.

619.602–1 [Amended]

■ 51. In section 619.602–1, remove ''A/SDBU'' and add in its place ''OSDBU''.

619.705–4 [Amended]

■ 52. In section 619.705–4, remove ''A/SDBU'' and add in its place ''OSDBU''.

619.705–6–70 [Amended]

■ 53. In section 619.705–6–70, in paragraphs (a) and (b), remove ''A/SDBU'' and add in its place ''OSDBU''.

619.803–70 [Amended]

■ 54. In section 619.803–70, remove ''A/SDBU'' and add in its place ''OSDBU''.

619.803–71 [Amended]

■ 55. Amend 619.803–71 as follows:
■ a. In the introductory text, remove ''$100,000'' and add in its place ''$150,000'' in both places it occurs;
■ b. In paragraph (b), remove ''Central Contractor Registration database (*http://www.ccr.gov*)'' and add in its place ''System for Award Management (*https://www.sam.gov*)''; and
■ c. In paragraph (d), in the second sentence, remove ''clause'' and ''DOSAR Clause'' and in the last sentence, remove ''A/SDBU and add in its place ''OSDBU''.

■ 56. Revise section heading for 619.804–3–70 to read as follows:

SBA Acceptance Under MOUs for Acquisitions Exceeding $150,000.

* * * * *

619.805–2 [Amended]

■ 57. In 619.805–2, in paragraph (b), remove ''$100,000'' and add in its place ''$150,000''.

619.811–1 [Amended]

■ 58. In 619.811–1:
■ a. In paragraph (d)(1), remove ''41 U.S.C 253(c)(5),'' and add in its place ''41 U.S.C. 3304(a)(5)'';
■ b. In paragraph (d)(2), remove the word ''DOSAR'';
■ c. In paragraph (d)(3), remove ''$100,000'' and add in its place ''$150,000''; and
■ d. In paragraph (d)(4), remove ''A/SDBU and add in its place ''OSDBU''.

619.811–3 [Amended]

■ 59. In section 619.811–3, in paragraph (d), remove ''$100,000'' and add in its place ''$150,000'' and in paragraph (e), remove ''DOSAR''.

619.812 [Amended]

■ 60. In section 619.812, in paragraph (d), remove ''DOSAR''.

■ 61. Add section 619.870 to read as follows:

619.870 Acquisition of technical requirements.

(a) *Offering letter.* When a decision has been made by OSDBU and the contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the Small and Disadvantaged Business Utilization Specialist. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the business concerns being considered under an 8(a) program acquisition if under the $4 million competitive threshold for 8(a) competition than under a non-8(a) program acquisition. Informal assessments of potential 8(a) sources shall be within the parameters of 13 CFR 124.308(g). The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 62. Revise the section 622.404 heading to read as follows:

622.404 Construction Wage Rate Requirements statute wage determinations.

* * * * *

622.404–3 [Amended]

■ 63. In section 622.404–3, remove ''601.603–70'' and add in its place ''601.601–70'', and add ''FAR'' immediately before ''22.404–3(b) and (d)''.

622.406–8 [Amended]

■ 64. In 622.406–8, paragraph (a), remove ''chief of the contracting activity'' and add in its place ''head of the contracting activity''.

Subpart 622.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000

■ 65. Revise the subpart 622.6 heading to read as set forth above.

Subpart 622.13—Equal Opportunity for Veterans

■ 66. Revise the subpart 622.13 heading to read as set forth above.

PART 623—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

■ 67. Add subpart 623.2, consisting of section 623.204, to read as follows:

Subpart 623.2—Energy and Water Efficiency and Renewable Energy

623.204 Procurement exemptions.

The head of the contracting activity is the agency head's designee for the purpose of executing the written determination to not purchase ENERGY STAR® or FEMP-designated products.''

623.302–70 [Amended]

■ 68. In section 623.302–70, in the first sentence, remove ''which'' and add in its place ''that''.

Subpart 623.4—Use of Recovered Materials and Biobased Products

■ 69. Revise the subpart 623.4 heading to read as set forth above.

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

624.202 [Redesignated as 624.203]

■ 70. Redesignate 624.202 as 624.203.

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American—Supplies

■ 71. Revise the subpart 625.1 heading to read as set forth above.

Subpart 625.2—Buy American—Construction Materials

■ 72. Revise the subpart 625.2 heading as set forth above.

625.7002 [Amended]

■ 73. In section 625.7002, remove ''DOSAR''.

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents and Copyrights

■ 74. Revise the subpart 627.2 heading as set forth above.

627.203 and 627.203–6 [Redesignated as 627.201 and 627.201–2]

■ 75. Redesignate sections 627.203 and 627.203–6 as 627.201 and 627.201–2.

■ 76A. Revise the newly redesignated section 627.201 heading to read as follows:

627.201 Patent and copyright infringement liability.

■ 76B. In newly redesignated section 627.201–2:
■ a. Revise the section heading.
■ b. Designate the text as paragraph (e).
■ c. Revise newly designated paragraph (e).

The revision reads as follows:

627.201–2 Contract clauses.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 27.201–2(e).

Subpart 627.3—Patent Rights under Government Contracts

■ 77. Revise the subpart 627.3 heading to read as set forth above.

627.303 [Amended]

■ 78. In the first sentence of section 627.303, remove ''for the purposes of'' and add in its place ''to make the determinations addressed in'' and, in the second sentence, add ''proposed to be'' between ''Determinations'' and ''issued''.

627.304–5 [Redesignated as 627.304–4]

■ 79. Redesignate section 627.304–5 as 627.304–4.

627.304–4 [Amended]

■ 80. In newly redesignated section 627.304–4, remove ''FAR 27.304–5'' and add in its place ''FAR 27.304–4'' and remove ''FAR 27.304–5(b)'' and add in its place ''FAR 27.304–4(b)''.

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds and Other Financial Protections

■ 81. Revise the subpart 628.1 heading to read as set forth above.

Subpart 628.2—Sureties and Other Security for Bonds

■ 82. Revise subpart 628.2 heading to read as set forth above.

628.305 [Amended]

■ 83. In section 628.305, remove paragraph (c).

628.309–70 [Amended]

■ 84. In section 628.309–70, remove the last sentence in paragraph (b) and remove paragraph (c).

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

631.205–6 [Amended]

■ 85. In section 631.205–6, redesignate paragraph (g)(3) as (g)(6).

PART 632—CONTRACT FINANCING

■ 86. Add section 632.006–3 to read as follows:

632.006–3 Responsibilities.

(b) DOS personnel shall report immediately and in writing any apparent or suspected instances where the contractor's request for advance, partial, or progress payments is based on fraud. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Procurement Executive.

632.705 [Redesignated as 632.706]

■ 87. Redesignate section 632.705 as 632.706.

632.705–70 [Redesignated as 632.706–70]

■ 88. Redesignate section 632.705–70 as 632.706–70.

PART 633—PROTESTS, DISPUTES, AND APPEALS

633.103 [Amended]

■ 89. In section 633.103, in paragraph (d)(4), remove ''Competition Advocate'' and add in its place ''Advocate for Competition''.

■ 90. In section 633.203, designate the current text as paragraph (b) and add paragraph (c) to read as follows:

633.203 Applicability.

* * * * *

(c) The Agency Board of Contract Appeals for the Department of State is the United States Civilian Board of Contract Appeals (CBCA). See *http://www.cbca.gsa.gov.*

633.214–70 [Amended]

■ 91. In section 633.214–70—

■ a. In paragraph (a), remove ''Contract Disputes Act'' and add in its place ''Disputes statute (41 U.S.C. chapter 71)''.

■ b. In paragraphs (c) introductory text and (c)(2), remove ''GSBCA'' and add in its place ''CBCA''.

■ c. In paragraph (d), last sentence, remove from the parentheses ''simplified acquisition limitation'' and add in its place ''simplified acquisition threshold''.

633.270 [Removed]

■ 92. Remove section 633.270.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

636.202 [Removed]

■ 93. Remove section 636.202.

636.513 [Amended]

■ 94. In section 636.513, in paragraph (a), remove ''DOSAR'' and add in its place ''the clause at''.

636.570 [Amended]

■ 95. In section 636.570, in paragraph (a)(3), remove ''DOSAR''.

■ 96. Add section 636.602–4 to read as follows:

636.602–4 Selection authority.

(a) For acquisitions conducted by A/LM/AQM on behalf of the Bureau of Overseas Buildings Operations, the final selection decision shall be made by the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations, with the concurrence of the contracting officer and L/BA. For other domestic acquisitions, the selection decision shall be made by an individual designated by the Assistant Secretary of State for Administration. For acquisitions conducted by overseas posts, the selection decision shall be made by the contracting officer.''

■ 97. Add section 636.606 to read as follows:

636.606 Negotiations.

(a) Contracting officers at overseas posts may request a waiver from A/OPE if the contracting officer is unable to negotiate a fee within the six percent limitation. See 615.404–4(c)(4)(i)(B).''

PART 637—SERVICE CONTRACTING

■ 98. In section 637.102, add paragraph (c) to read as follows:

637.102 Policy.

(c) Any Acquisition Plan or procurement request package for services expected to exceed $25,000 shall include a Form DS–4208 completed by the requiring activity. Instructions for completing the DS–4208 may be found at *http://aopepd.a.state.gov/Content/documents/DS-4208-Instructions.docx.*

■ 99. Amend section 637.103 by designating the current text as paragraph (a)(2) and adding paragraph (e) to read as follows:

637.103 Contracting officer responsibility.

* * * * *

(e) The Contracting Officer shall review the Forms DS–4208 submitted by requiring activities, not contract for inherently governmental functions and assist in implementation of mitigation strategies for efforts that are closely associated with inherently governmental functions. A copy of the DS–4208 shall be retained in the contract file.

637.104 [Amended]

■ 100. Amend section 637.104 by designating the current text as paragraph (e).

■ 101. Revise the heading for section 637.104–70 to read as follows:

637.104 DOS authorities for personal services contracts.

* * * * *

■ 102. Add section 637.104–71 to read as follows:

637.104–71 Personal services agreements.

(a) *Applicability.* This section applies only to personal services agreements (PSAs) awarded under the authority of 22 U.S.C. 2669(c).

(b) *Definition.* ''Personal Services Agreement (PSA)'' is a method of employment using the statutory authority under 22 U.S.C. 2669(c). The Procurement Executive has delegated program management responsibility for PSAs awarded under the Department of State basic authority at 22 U.S.C. 2669(c). When applied to U.S. citizens hired under this authority, the term ''PSA Plus'' is normally used.

(c) *Policy.* DOS contracting officers at overseas posts should not award any personal services contracts that are subject to acquisition statutes and regulations.

(d) *Authority.* (1) The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, amended section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)) by revising the Department's authority. This language states: ''and such contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, without regard to such statutory provisions as relative to the negotiation, making, and performance of contracts and performance of work in the United States.''

(2) This authority was further amended under the National Defense Authorization Act for Fiscal Year 2002 which added subsection (n) to 22 U.S.C. 2669. This language states ''exercise the authority provided in section (c), upon the request of the Secretary of Defense or the head of any other department or agency of the United States, to enter into personal services contracts with individuals to perform services in support of the Department of Defense or such other department or agency, as the case may be.'' This authority allowed the use of 22 U.S.C. 2669(c) by all other agencies, provided they meet certain criteria and agree to follow certain guidelines laid out in a Memorandum of Agreement (MOA). That MOA is not signed at the post level, but by a senior official at the Department of State and the other agency. Without the MOA in place, other agencies may not use this basic authority. HR/OE has responsibility for implementation of the authority that came with this legislative change. The HR/OE Web site includes the latest listing of agencies that have signed the MOA and can use this authority.

(3) This statutory language has continuing effect and provides authority to the Department of State, and now other agencies, if they so agree, to obtain personal services without adherence to acquisition statutes. In furtherance of the authority provided by the statute, the Procurement Executive has waived the applicability of acquisition regulations when obtaining personal services under the authority of 22 U.S.C. 2669(c). As a result, it is not necessary for the individual executing a PSA under the authority of 22 U.S.C. 2669(c) to have a contracting officer's certificate of appointment required under FAR 1.603 and 601.603 (see 601.603–3(d)).

(e) *Signatory authority.* Only direct hire U.S. citizens may sign PSAs. Provided the individual meets that criterion, individuals who may sign PSAs are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or American FSO designated to perform human resources functions (*e.g.,* GSO, RSO, etc.).

637.601 [Amended]

■ 103. In 637.601, remove ''Competition Advocate'' and add in its place ''Advocate for Competition''.

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 642.14 [Removed]

■ 104. Remove subpart 642.14.

■ 105. Revise section 642.1503–70 to read as follows:

642.1503–70 Contractor Performance Assessment Reporting System (CPARS).

(a) The Department of State subscribes to the Contractor Performance Assessment Reporting System (CPARS) maintained at *http://www.cpars.gov/.* CPARS is an Internet-based tool allowing government activities to input past performance information. This information is uploaded by CPARS into the Past Performance Information Retrieval System (PPIRS).

(b) All DOS contracting officers shall evaluate contractors' past performance as required by FAR 42.1502 and 42.1503.

(c) All Terminations for Default and Terminations for Cause shall be entered into CPARS regardless of contract purpose or dollar value.

(d) Heads of contracting activities shall send a list of the names, work addresses, and phone numbers of all acquisition personnel whom they wish to have access to the CPARS to *AQMCPARS@state.gov.*

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 644.3—Contractors' Purchasing Systems Reviews

■ 106. Revise the subpart 644.3 heading to read as set forth above.

PART 645—GOVERNMENT PROPERTY

645.107–70 [Amended]

■ 107. Amend section 645.107–70 as follows:

■ a. In paragraph (a)(1), remove ''and'' and add in its place ''or,''; and

■ b. In paragraph (a)(3), remove ''paragraphs'' and add in its place ''paragraph'' and remove ''or (2)''.

PART 647—TRANSPORTATION

■ 108. Add subpart 647.3 to read as follows:

Subpart 647.3—Transportation in Supply Contracts

Subpart 647.3—Transportation in Supply Contracts

647.305 Solicitation provisions, contract clauses, and transportation factors.

647.305–70 Notice of shipment.

The contracting officer shall insert the clause at 652.247–70, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

647.305–71 Shipping instructions.

The contracting officer shall insert the clause at 652.247–71, Shipping Instructions, in solicitations and contracts with a source in the United States if overseas shipment of supplies is required.

PART 649—TERMINATION OF CONTRACTS

649.106 [Amended]

■ 109. In section 649.106, remove ''Termination'' and remove ''TCO'' and add in its place ''CO'' both places it occurs.

■ 110. Add section 649.111 as follows:

649.111 Review of proposed settlements.

All proposed termination settlements shall be reviewed and approved by the Office of the Legal Adviser for legal sufficiency. In addition,

(a) All proposed termination settlements from domestic contracting activities shall be approved by the head of the contracting activity, with the exception of termination settlements on simplified acquisitions and no-cost termination settlements; and,

(b) All proposed termination settlements from overseas contracting activities shall be approved by the Procurement Executive.

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 111. Revise section 652.204–70 to read as follows:

652.204–70 Department of State Personal Identification Card Policy and Procedures.

As prescribed in 604.1303–70, insert the following clause:

DEPARTMENT OF STATE PERSONAL IDENTIFICATION CARD POLICY AND PROCEDURES ([DATE])

(a) The Contractor shall comply with the Department of State (DOS) Personal Identification Card Policy and Procedures for all employees performing under this contract who require frequent and continuing access to DOS facilities, or information systems. The Contractor shall insert the substance of this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to DOS facilities, or information systems.

(b) The DOS Personal Identification Card Policy and Procedures may be accessed at *http://www.state.gov/m/ds/rls/rpt/c21664.htm.*

(End of clause)

■ 112. Amend section 652.206–70 by revising the section heading and the clause date and revising paragraph (a) to read as follows:

652.206–70 Advocate for Competition/ Ombudsman.

* * * * *

Advocate for Competition/Ombudsman (DATE)

(a) The Department of State's Advocate for Competition is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are encouraged first to contact the contracting officer for the solicitation. If concerns remain unresolved, contact:

(1) For solicitations issued by the Office of Acquisition Management (A/LM/AQM) or a Regional Procurement Support Office, the A/LM/AQM Advocate for Competition, at *AQMCompetitionAdvocate@state.gov.*

(2) For all others, the Department of State Advocate for Competition at *cat@state.gov.*

652.228–70 [Amended]

■ 113. Amend section 652.228–70 by removing the clause date ''(JUN 2006)'' and adding in its place ''(DATE)'' and by removing paragraph (d).

■ 114. Amend section 652.228–71 as follows:

■ a. Remove the clause date ''(JUN 2006)'' and add in its place ''(DATE)'';

■ b. Revise paragraph (b);

■ c. Remove paragraphs (c), (d), (e), and (f);

■ d. Redesignate paragraph (g) as (c); and

■ e. Remove Alternate I.

The revision reads as follows:

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services.

* * * * *

(b) The Contractor shall procure Defense Base Act (DBA) insurance directly from a Department of Labor (DOL) approved insurance provider. Approved providers can be found at the DOL Web site at *http://www.dol.gov/owcp/dlhwc/lscarrier.htm.*''

* * * * *

652.228–72 and 652.228–73 [Removed]

■ 115. Remove reserved sections 652.228–72 and 652.228–73.

652.228–74 [Removed]

■ 116. Remove section 652.228–74.

■ 117. Section 652.236–71 is amended as follows:

■ a. Remove the clause date ''(APR 2004)'' and add in its place ''(DATE)'';

■ b. in subparagraph (b)(1), add the phrase ''or at a United States diplomatic or consular establishment abroad'' immediately following ''in the United States''; and

■ c. In paragraph (d)(1):

■ i. Add the phrase ''or at a United States diplomatic or consular establishment abroad'' immediately following ''in the United States'' both places it occurs;

■ ii. Add ''/Country'' after ''City and State'' each time it occurs under the ''Location'' fill-ins; and

■ iii. Revise the last sentence of paragraph (d)(1).

The revision reads as follows:

652.236–71 Foreign Service Buildings Act, as Amended.

* * * * *

(d) * * *

(1) * * *

If the bidder/offeror's participation was as a partner or co-venturer, indicate the percentage of the project performed by the bidder/offeror: _____ %

* * * * *.

652.236–72 [Amended]

■ 118. Section 652.236–72 is amended as follows:

■ a. Remove the clause date ''(APR 2004)'' and add in its place ''(DATE)'';

■ b. In paragraph (a):

■ i. In the first sentence, remove the phrase ''and Section 406(c)'';

■ ii. In the second sentence; remove '', and excludes organizations that have business arrangements with Libya''; and

■ iii. In the third sentence, remove the phrase '', and whether they have any business arrangements with Libya that may disqualify them from participating in this solicitation''; and

■ c. Remove paragraph (d)9.

■ 119. In section 652.237–72, remove the clause date ''(APR 2004)'' and add in its place ''(DATE)'' and revise the first sentence of paragraph (b) to read as follows:

652.237–72 Observance of Legal Holidays and Administrative Leave.

* * * * *

(b) When New Year's Day, Independence Day, Veterans Day or Christmas Day falls on a Sunday, the following Monday is observed; when it falls on Saturday, the preceding Friday is observed. * * *

* * * * *

652.242–71 [Redesignated as 652.247–70]

■ 120. Redesignate section 652.242–71 as 652.247–70.

652.242–71 [Reserved]

■ 121. Add reserved section 652.242–71.

652.242–72 [Redesignated as 652.247–71]

■ 122. Redesignate section 652.242–72 as 652.247–71.

652.242–72 [Reserved]

■ 123. Add reserved section 652.242–72.

652.245–71 [Amended]

■ 124. Amend section 652.245–71 by removing the clause date ''(DEC 2013)'' and adding in its place ''(DATE)'', by removing ''and'' and adding in its place ''or'' in paragraph (c)(1), and by removing ''or (c)(2)'' in paragraph (c)(3).

652.247–70 [Amended]

■ 125. In newly redesignated section 652.247–70, in the introductory text, remove ''642.1406–2–70(a)'' and add ''647.305–70'' in its place and remove the clause date ''(JUL 1988)'' and add in its place ''(DATE)''.

652.247–71 [Amended]

■ 126. In newly redesignated section 652.247–71, in the introductory text, remove ''642.1406–2–70(b)'' and add ''647.305–71'' in its place and remove the clause date ''(DEC 1994)'' and add in its place ''(DATE)''.

Dated: December 23, 2014.

Corey M. Rindner,

Procurement Executive, Department of State.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, and 229

[Docket No. 110812495–4999–03]

RIN 0648–BB37

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; Sea Turtle Conservation; Modification to Fishing Activities

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this final rule amending the Bottlenose Dolphin Take Reduction Plan (BDTRP) and its implementing regulations under the Marine Mammal Protection Act (MMPA). The rule requires the year-round use of modified pound net leaders for offshore Virginia pound nets in specified waters of the lower mainstem Chesapeake Bay and coastal state waters. Virginia pound net-related definitions, gear prohibitions, and non-regulatory measures are also finalized. This final rule is based on consensus recommendations of the Bottlenose Dolphin Take Reduction Team (BDTRT). For consistency, NMFS also amends current regulations and definitions for Virginia pound nets under the Endangered Species Act (ESA) for sea turtle conservation.

DATES: This final rule is effective March 11, 2015.

ADDRESSES: The proposed rule, the BDTRP and its amendments, the BDTRT meeting summaries with consensus recommendations, and other background documents are available at *www.regulations.gov,* or the Take Reduction Team Web site: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm,* or by submitting a request to Stacey Horstman (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, *Stacey.Horstman@noaa.gov,* 727–824–5312; Kristy Long, NMFS Office of Protected Resources, *Kristy.Long@noaa.gov,* 206–526–4792; or Carrie Upite, NMFS Greater Atlantic Region, *Carrie.Upite@noaa.gov,* 978–282–8475.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends: (1) The BDTRP and its implementing regulations at 50 CFR 229.2, 229.3, and 229.35 in accordance with section 118(f) of the MMPA; and (2) current definitions and regulations issued under the ESA for sea turtle conservation at 50 CFR 222.102, 223.205, and 223.206 (d)(10). The BDTRP was originally published on April 26, 2006, and was amended on December 19, 2008, and July 31, 2012. NMFS is further amending the BDTRP to meet its MMPA-mandated goal of reducing incidental mortality and serious injury of strategic stocks of bottlenose dolphin from the Virginia pound net fishery. Regulations for this amendment are based on the BDTRT's consensus recommendations, which are generally consistent with existing regulations enacted under the ESA for sea turtle conservation, with some revisions and updates. Therefore, amendments to the ESA sea turtle conservation regulations for the Virginia pound net fishery are finalized within the same rulemaking for consistency in definitions and regulations.

Details regarding the development and justification of this final rule were provided in the preamble of the proposed rule (79 FR 21695; April 17, 2014) and are not repeated here.

Virginia Pound Net Fishing Requirements

This final rule requires the year-round use of modified pound net leaders for offshore Virginia pound nets within the Bottlenose Dolphin Pound Net Regulated Area. It removes the land-based inspection program for modified pound net leaders under the ESA. Instead, under both the MMPA and ESA, it requires fishermen to attend a one-time compliance training before setting modified pound net leaders and to keep on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. The rule also requires that all three sections of pound net gear (leader, heart, and pound) be fished at the same time with the exception of a continuous 10-day period to deploy, remove, and/or repair gear. Virginia pound net-related definitions are added for effective implementation of the regulatory measures, including hard lay lines, modified pound net leader, nearshore pound net, offshore pound net, and pound net. Lastly, non-regulatory measures are finalized under the BDTRP including outreach and coordination to help with compliance and monitoring of regulatory measures for the Virginia pound net fishery.

Comments on the Proposed Rule and Responses

NMFS received five comment letters on the proposed rule via email or *www.regulations.gov.* One comment letter was received from multiple organizations, including The Humane Society of the United States, Whale and Dolphin Conservation, Oceana, and Center for Biological Diversity. Other comment letters were received from the Marine Mammal Commission, one Virginia pound net fisherman, and two citizens. The comments are summarized below under Regulatory or Non-Regulatory Changes. NMFS' response follows each comment.

Comments on Regulatory Changes

Comment 1: Four comment letters, including one from multiple environmental organizations, expressed general support for the proposed rule and recommended NMFS adopt the measures as proposed.

Response: We appreciate the commenters' support, and we are finalizing these measures as proposed.

Comment 2: One comment letter from multiple environmental organizations expressed concern over the delay from when the BDTRT's consensus recommendations were received in September 2009 to when NMFS published the proposed rule. The letter references requirements in section 118(f)(7)(B)(i) of the MMPA that publication of proposed take reduction plans and amendments must occur no later than 60 days after the take reduction team submits them to NMFS. The letter also expressed concern that this delay needlessly delayed conservation measures meant to protect bottlenose dolphins.

Response: We acknowledge and regret the extensive delay from the time when the BDTRT provided us with their recommendations to when the proposed rule was published. There were many unforeseen factors that contributed to the delay. However, some important conservation benefits were immediately provided for protected species despite the delay.

Immediately following the September 2009 BDTRT meeting and as recommended by the Team, we sent the Virginia Marine Resources Commission (VMRC) a letter with the BDTRT's recommendations to reduce bottlenose dolphin serious injury and mortality from the Virginia pound net fishery. After receiving our letter, the VMRC promptly held public hearings and related meetings to discuss similar state regulations for the fishery. We sent the VMRC a follow-up comment letter supporting their actions and requested they adopt the BDTRT's recommendations. The VMRC subsequently enacted two regulations on December 18, 2009 and July 16, 2010 for the pound net fishery based in part on the BDTRT's recommendations. Importantly, the regulation issued in December 2009 required fishermen using offshore pound nets in the Virginia tidal waters east of the Chesapeake Bay Bridge Tunnel to use a modified leader year-round. This includes the area in the southern portion of Chesapeake Bay near Lynnhaven Inlet where the majority (77%) of dolphin entanglements in pound net leaders were documented. The state regulation issued in July 2010 required fishermen using offshore nets in the sea turtle Pound Net Regulated Area I to use modified leaders from May 6 through July 31. This provided an additional two weeks of conservation benefits in this area than were required at the time under the ESA sea turtle conservation regulations. Bottlenose dolphin stranding data confirm a conservation benefit to dolphins from the enactment of these state regulations. When comparing stranding data for the two-years immediately before (2008–2009) and after (2010–2011) the state's 2010 regulations, there was a 64% decrease in the total average annual number of bottlenose dolphin interactions with pound nets in the regulated waters. Additional regulations are still needed however to help ensure pound net entanglements do not cause mortality or serious injury of bottlenose dolphins to exceed the Potential Biological Removal (PBR) level for affected stock(s), especially the Northern North Carolina Estuarine System Stock.

Comment 3: One comment letter from multiple environmental organizations stated that the BDTRP is not meeting its MMPA-mandated goals for take reduction plans because mortality and serious injury levels of some stocks of bottlenose dolphins exceeds PBR levels and greatly exceeds the long-term goal. Amending the BDTRP with the proposed Virginia pound net regulations was stated as a minimally needed step in achieving required goals. Furthermore, this amendment was viewed as especially important given the Unusual Mortality Event declared for the Atlantic United States' coast in July 2013, currently resulting in the loss of over 1,300 bottlenose dolphins, of which the greatest losses have occurred in Virginia.

Response: We agree that this amendment is necessary to further reduce bottlenose dolphin serious injury and mortality for Virginia pound net gear and to help the BDTRP meet its required goals. We recognize there are some stocks of bottlenose dolphins from which mortality and serious injury from commercial fishing gear is likely exceeding that stock's PBR. As required by the MMPA, we are continuing to monitor the implementation of the BDTRP and will convene the BDTRT as needed to develop recommendations to help further reduce mortality and serious injury of dolphin stock(s). Within the past year, we convened the BDTRT three times to provide us with recommendations for reducing mortality and serious injury to bottlenose dolphins from commercial gillnet gear in North Carolina specifically, and the North Carolina Division of Marine Fisheries has implemented all of the BDTRT's regulatory recommendations from each of these meetings. These regulatory measures in North Carolina also provide conservation benefit to some of the same stocks affected by Virginia pound net gear. We will continue to implement the BDTRT's recommendations, as resources allow, to help meet required goals.

Comment 4: One pound net fisherman expressed concern about the need to change their offshore pound net leader(s) from a traditional to a modified leader and claimed a loss of $30–40,000 from this change.

Response: We acknowledge that any fisherman who has to modify pound net leaders as a result of this rule will incur additional operating costs if replacement gear is required. We calculated the one-time initial cost to change an offshore pound net leader from a traditional to a modified leader as $7,068 per leader. Because nets need to be routinely replaced due to normal use, the subsequent increase in costs would be equal to the difference in cost between a traditional and a modified leader, or $1,650. The economic analysis provided in the proposed rule concluded that all entities expected to be directly affected by this rule were expected to already use modified leaders in these areas even if not required during certain times of the year because: (1) Of the added expense in maintaining both leader types and switching out the gear when modified leaders were not required; and (2) absence of demonstrated differences in harvest rates between nets using traditional versus modified leaders to offset the added gear costs. As stated earlier, all identified entities expected to be directly affected by this rule are expected to currently possess modified leaders and increased gear costs were not identified in the comment as a contributor to the estimated loss of $30,000 to $40,000. Therefore, if the comment refers to anticipated losses other than from harvest reductions, specific gear-related increased costs would be limited to permanently changing leaders and not the purchase of new leaders. We acknowledge that, despite research findings showing no significant differences between catch from traditional versus modified leaders, this result may not apply to all fishermen who have different fishing preferences, skills, and behaviors. Although this loss may be consistent with the experience of this fisherman, it would be inconsistent with the best scientific information available. Therefore, we believe these effects are overstated and would also not be expected to accrue to other fishermen.

Comments on Non-Regulatory Changes

Comment 5: One commenter recommended NMFS continue to monitor for evidence of protected species bycatch in Virginia pound net leaders to evaluate the effectiveness of the rule once it is implemented.

Response: We agree, and will continue to monitor protected species entanglement and stranding data to assess the effectiveness of the rule at reducing sea turtle and bottlenose dolphin interactions with Virginia pound net gear. We will also monitor entanglement and stranding data to assess whether additional amendments to the BDTRP or sea turtle conservation regulations are needed.

Comment 6: One commenter raised concerns that enforcement of the proposed regulations would be difficult without: (1) Including specific

information on how violations of the regulations would be assessed; and (2) requesting additional funding to support collaborative on-water enforcement.

Response: We agree that enforcement of regulations is important. However, we do not include specific details in regulations, such as how violations will be assessed, because the MMPA and ESA have statutory and regulatory requirements for establishing appropriate penalties. Federal agents and State officers authorized under Cooperative Enforcement Agreements monitor compliance and investigate potential violations of the statutes and regulations enforced by NOAA. In general, when an investigating agent or officer identifies a statutory or regulatory violation, they may pursue one of several available options, depending on the nature and seriousness of the violation. We often rely on partnerships with State officers to assist in enforcing regulations, such as with this regulation and the collaborative on-water monitoring and enforcement with the state of Virginia discussed in the proposed rule. When fiscal year budget appropriations are provided, we carefully consider all program and management needs to prioritize potential funding available to support enforcement-related needs.

Comment 7: One commenter expressed that NMFS should collaborate with commercial fishermen affected by these regulations and marine mammal experts.

Response: We agree, and included on the BDTRT are Virginia pound net and other commercial fishermen, as well as experts in the conservation or biology of marine mammal species as required under section 118(f)(6)(C) of the MMPA. The BDTRT provided us with consensus recommendations to reduce mortality and serious injury of dolphins from Virginia pound net gear. This regulation is based on their recommendations.

Classification

This final 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 during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. One comment was received regarding the expected economic effects of the proposed rule. This comment is addressed in the comments and response section of this final rule. The comment stated that this rule would have a larger economic effect on the fishing operation of the commenter than described in the proposed rule. No other comments were received that challenged the economic analysis provided, and the information provided in the comment is inconsistent with the best scientific information available regarding the catch efficiency of pound net gear using different leaders.

Although not an issue raised through public comment, subsequent to publication of the proposed rule, NMFS reconsidered its analysis with respect to the appropriate universe of affected entities. In the proposed rule, NMFS identified 16 entities upon which the proposed rule would directly apply, or less than one percent of the estimated 3,000 licensed commercial finfish fishermen in Virginia. The basis for consideration of the 16 entities within the context of the 3,000 licensed fishermen was consideration that the 16 entities use multiple gears in addition to pound nets to harvest saltwater species and the species they harvested with their pound nets are also commonly, and for some species primarily, harvested by other fishermen within the 3,000 licensed fishermen, who also fish with multiple gears. As a result, in the original analysis, these 16 entities were considered part of the general commercial finfish industry and not sufficiently distinct to be considered a separate industry. Even if NMFS considered this component to be a distinct fishing sector and, as a result, this rule would be expected to directly apply to 100 percent of the entities in the sector, the outcome would be the same, because of the absence of expected adverse economic effects on these entities. As noted in the proposed rule, all fishermen using an offshore pound net are expected to already be using the modified pound net leaders required by this final rule for three main reasons: (1) The modified pound net leaders are currently required year-round or seasonally within the BDPNRA by state or federal regulations; (2) research on the catch efficiency of modified pound net leaders within the BDPNRA showed no significant differences in harvest weight for the species analyzed when compared to using traditional leaders; and (3) incurring the costs associated with maintaining two types of leaders and switching the gear when modified leaders were not required by either current state or federal regulations would not make rational economic sense given the absence of improvements in catch efficiency. Traditional leaders installed on offshore pound nets were calculated to cost $5,418 to make and install/remove. Maintaining and using both types of leaders (*i.e.,* traditional and modified) would require expenditure of this cost, in addition to the cost of making a modified leader, as well as labor costs of switching leaders. If harvest and revenue is not increased by switching to the traditional leader, as demonstrated by available research, then bearing these additional gear and labor costs would be unjustified. Thus, even though this final rule will require the use of modified pound net leaders on offshore pound nets year-round in the BDPRNA, all fishermen who will be potentially affected are expected to currently use modified leaders when using pound nets in this area. Additionally, no fisherman who may have previously switched leaders over the course of the year, as suggested by the one public comment, is expected to incur significant adverse economic effects because switching leaders will no longer be allowed as a result of this final rule. Therefore, the available information is sufficient to support a certification that this rule will not have a significant adverse economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Zone Management Program. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act on April 17, 2014. The Commonwealth of Virginia concurred with the consistency determination in a letter dated May 8, 2014.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the Commonwealth of Virginia. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in Virginia. The Commonwealth of Virginia did not respond.

The final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act. The sea turtle conservation regulations have a current Paperwork Reduction Act collection requirement in place (OMB control number 0648–0559) for the

inspection program. This final rule removes that collection of information requirement.

List of Subjects

50 CFR Part 222

Endangered and threatened species, Exports, and Reporting and recordkeeping requirements.

50 CFR Part 223

Endangered and threatened species, Exports, and Transportation.

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and record keeping requirements.

Dated: February 3, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222, 223, and 229 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

■ 2. In § 222.102:
■ A. The definition for ''Hard lay lines'' is added in alphabetical order;
■ B. The definition for ''Modified pound net leader'' is revised;
■ C. The definitions for ''Nearshore pound net leader or nearshore pound net'', ''Offshore pound net leader or offshore pound net'', and ''Pound net'' are added in alphabetical order; and
■ D. The definitions for ''Pound net leader,'' ''Pound Net Regulated Area I,'' and ''Pound Net Regulated Area II'' are revised.

The additions and revisions read as follows:

§ 222.102 Definitions.

* * * * *

Hard lay lines mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and 42 visible twists of strands per foot of line.

* * * * *

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader, the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines.

Nearshore pound net leader or nearshore pound net means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

* * * * *

Offshore pound net leader or offshore pound net means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

* * * * *

Pound net means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of:

(1) A pound made of mesh netting that entraps the fish;

(2) At least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and

(3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

Pound net leader means a long straight net that directs fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers, also known as vertical lines, are spaced a regular distance apart and are not crossed by other lines to form mesh.

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay and the portion of the James River seaward of the Hampton Roads Bridge Tunnel (Interstate Highway-64) and the York River seaward of the Coleman Memorial Bridge (Route 17), bounded to the south and east by the Chesapeake Bay Bridge Tunnel (Route 13; extending from approximately 37°07′ N. lat., 75°58′ W. long. to 36°55′ N. lat., 76°08′ W. long.), and to the north by the following points connected by straight lines and in the order listed:

Point	Area description
1	Where 37°19.0′ N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75′ W. long.
2	37°19.0′ N. lat., 76°13.0′ W. long.
3	37°13.0′ N. lat., 76°13.0′ W. long.
4	Where 37°13.0′ N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75′ W. long.

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I, bounded by the Maryland-Virginia State line to the north and by the COLREGS line at the mouth of the Chesapeake Bay and 37°07′ N. lat. between Kiptopeke and Smith Island, Northampton County, Virginia to the south and east. This area includes the Great Wicomico River seaward of the Jessie Dupont Memorial Highway Bridge (Route 200), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3), the Piankatank River downstream of the Route 3 Bridge, and all other tributaries within these boundaries.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. In § 223.205, paragraphs (b)(17) through (b)(20) are revised to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(17) Set, fish with, or fail to remove a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless the pound net licensee and the vessel operator meet the modified pound net leader compliance training requirements in accordance with § 223.206(d)(10)(vii).

(18) Alter or replace any portion of a modified pound net leader so that the

altered or replaced portion no longer meets the modified pound net leader definition in 50 CFR 222.102, unless that alteration or replacement occurs outside the regulated period of May 6 through July 15.

(19) Set, fish with, or fail to remove a modified pound net leader at any time from May 6 through July 15 in Pound Net Regulated Area I or Pound Net Regulated Area II unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

(20) Set, fish with, or fail to remove pound net gear in Pound Net Regulated Area I or Pound Net Regulated Area II, unless it has the all three continuous sections as defined in 50 CFR 222.102, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.

* * * * *

■ 5. In § 223.206, paragraph (d)(10)(vii) is revised to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(10) * * *

(vii) Modified pound net leader compliance training. Any pound net licensee and any vessel operator who have modified pound net leaders set in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

* * * * *

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 6. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 7. In § 229.2, the definitions ''Hard lay lines,'' ''Modified pound net leader,'' ''Nearshore pound net,'' ''Offshore pound net,'' and ''Pound net'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Hard lay lines mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and 42 visible twists of strands per foot of line.

* * * * *

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader, the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines.

Nearshore pound net means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

* * * * *

Offshore pound net means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

* * * * *

Pound net means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of:

(1) A pound made of mesh netting that entraps the fish;

(2) At least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and

(3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

* * * * *

■ 8. In § 229.3 paragraph (s) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(s) *General Bottlenose Dolphin Take Reduction Plan.* (1) It is prohibited to set, fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet or pound net from the waters specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(2) It is prohibited to set, fish with, or fail to remove a modified pound net leader in the Bottlenose Dolphin Pound Net Regulated Area unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

* * * * *

■ 9. In § 229.35 paragraphs (a) and (c) are revised, a definition for ''Bottlenose Dolphin Pound Net Regulated Area'' is added to paragraph (b), and paragraph (d)(2)(ii) is added to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce incidental mortality and serious injury of strategic stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype in specific Category I and II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are indentified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets and pound nets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras, southward to, and including the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) * * *

Bottlenose Dolphin Pound Net Regulated Area means all Virginia marine waters of the Atlantic Ocean within 3 nautical miles (5.56 km) of shoreline and all adjacent tidal waters, bounded on the north by 38°01.6′ N. (Maryland/Virginia border) and on the south by 36°33′ N (Virginia/North Carolina border); and all southern Virginia waters of the mainstem Chesapeake Bay bounded on the south and west by the Hampton Roads Bridge Tunnel across the James River and the Coleman Memorial Bridge across the York River; and north and east by the

following points connected by straight lines in the order listed:

Point	Area description
1	Where 37°19.0′ N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75′ W. long.
2	37°19.0′ N. lat., 76°13.0′ W. long.
3	37°13.0′ N. lat., 76°13.0′ W. long.
4	Where 37°13.0′ N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75′ W. long.

* * * * *

(c) *BDTRP Regulated Waters*—(1) *Gillnets.* The regulations pertaining to gillnets in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37° 52′ N. 75° 24.30′ W. to 37° 11.90′ N. 75° 48.30′ W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(2) *Pound nets.* The regulations pertaining to pound nets in this section apply to the Bottlenose Dolphin Pound Net Regulated Area.

(d) * * *

(2) * * *

(ii) *Pound nets.* (A) Year-round, any offshore pound net in the Bottlenose Dolphin Pound Net Regulated Area must use a modified pound net leader.

(B) Year-round, any nearshore and offshore pound nets set in the Bottlenose Dolphin Pound Net Regulated Area must have all three continuous sections as defined in 50 CFR 229.2, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.

(C) The pound net licensee and the vessel operator of any offshore pound net set in the Bottlenose Dolphin Pound Net Regulated Area must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

* * * * *

[FR Doc. 2015–02607 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 26
Monday, February 9, 2015

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

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2015–0003; Notice No. 147]

RIN 1513–AC13

Use of American Viticultural Area Names as Appellations of Origin on Wine Labels

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is proposing to amend its regulations to permit the use of American viticultural area names as appellations of origin on labels for wines that would otherwise qualify for the use of the AVA name, except that the wines have been fully finished in a State adjacent to the State in which the viticultural area is located, rather than the State in which the labeled viticultural area is located. The proposal would provide greater flexibility in wine production and labeling while still ensuring that consumers are provided with adequate information as to the identity of the wines they purchase. TTB permits the use of viticultural area names as appellations of origin on wine labels, so that vintners may better describe the origin of their wines and consumers may better identify the wines they may purchase.

DATES: Comments must be received by April 10, 2015.

ADDRESSES: Please send your comments on this proposed rule to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for this proposed rule as posted within Docket No. TTB–2015–0003 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this proposed rule for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this proposed rule and any comments that TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2015–0003. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 147. You also may view copies of this proposed rule and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling and Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved viticultural areas.

Definitions

Appellation of Origin: An appellation of origin may be used on a wine label in order to describe the origin of the fruit or agricultural products used to produce the wine. Section 4.25(a)(1) of the TTB regulations (27 CFR 4.25(a)(1)) defines an appellation of origin for American wine as: (i) The United States; (ii) a State, or (iii) two or no more than three contiguous States; (iv) a county, or (v) two or no more than three counties from the same State; or (vi) a viticultural area. Section 4.25 also sets forth the eligibility requirements for the use of an appellation of origin.

American Viticultural Area (AVA): Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These American viticultural area (AVA) designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Current Requirements for Use of Appellations of Origin

Section 4.25(b)(1) of the TTB regulations (27 CFR 4.52(b)(1)), in part, sets forth the requirements for labeling an American wine with a State name as an appellation of origin. For a wine labeled with a State appellation of origin, at least 75 percent of the wine must be derived from fruit or agricultural products grown in the State used as the appellation, and the wine must be fully finished in either the

labeled State or in an adjacent State. In the case of multi-State appellations of origin, which may consist of two or three contiguous States, § 4.25(d)(1) requires that all the fruit or other agricultural products used in the wine be grown in the States indicated in the appellation and that the wine must be fully finished within one of those States. Wine is considered to be ''fully finished'' if it is ready to be bottled, except that cellar treatment and blending that does not result in an alteration of class and type is still permitted.

Section 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)), in part, sets forth the requirements for labeling American wine with an AVA as an appellation of origin. Under this section, at least 85 percent of the wine must be derived from grapes grown within the named AVA. Additionally, in order to use the name of an AVA that is located entirely within a single State, hereinafter referred to as a ''single-State AVA,'' the wine must also be fully finished within the State in which the labeled AVA is located. In the case of AVAs that cover two or more States, hereinafter referred to as ''multi-State AVAs,'' the wine must be fully finished within one of the States in which the AVA is located.

These current regulations, including the requirement that a wine labeled with an AVA appellation of origin must be fully finished within the State (or one of the States) in which the AVA is located, are derived from T.D. ATF–53, published in the **Federal Register** by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) at 43 FR 37672 on August 23, 1978. Prior to publication of that Treasury Decision, ATF did not have codified definitions for ''appellation of origin'' or ''viticultural area,'' and there was no systematic approach to designating a region as a ''viticultural area.'' The ATF regulatory requirements for the use of an appellation of origin on a wine label prior to T.D. ATF–53 stated that: (1) At least 75 percent of the wine be derived from fruit or other agricultural products grown in the named region; (2) the wine be fully manufactured and finished within the State containing the named region; and (3) the wine be made in compliance with the named region's laws and regulations.

TTB Notice No. 142—Proposal To Establish The Rocks District of Milton-Freewater AVA

On February 26, 2014, TTB published Notice No. 142 in the **Federal Register**, proposing the establishment of ''The Rocks District of Milton-Freewater'' AVA in Umatilla County, Oregon (see 79 FR 10742). Elsewhere in this issue of the **Federal Register**, TTB is publishing T.D. TTB–127, which formally establishes The Rocks District of Milton-Freewater as an AVA. The AVA is located near the Oregon-Washington State line, approximately 10 miles south of the city of Walla Walla, Washington. The AVA is also located within the larger Walla Walla Valley and Columbia Valley AVAs, both of which cover portions of Washington and Oregon.

During the public comment period for Notice No. 142, TTB received comments from several winemakers who primarily use grapes grown within The Rocks District of Milton-Freewater but fully finish their wines using custom crush facilities across the State line in Walla Walla, Washington. Some of the commenters stated that they use custom crush facilities in Walla Walla because there are no such facilities nearby in Oregon. TTB understands custom crush facilities to be businesses that provide a variety of winemaking services, such as grape crushing, fermentation, barrel and tank storage, wine analysis, and bottling, for clients that do not have their own facilities. Other commenters stated that they own wineries in Walla Walla and also own vineyards both in Washington and in The Rocks District of Milton-Freewater AVA.

Because The Rocks District of Milton-Freewater AVA is a single-State AVA located in Oregon, under current TTB wine labeling regulations, none of these commenters would be able to use that AVA name as an appellation of origin, even if 85 percent of the grapes in their wines came from The Rocks District of Milton-Freewater AVA, because their wines are fully finished in Washington. However, their wines could be labeled with the Columbia Valley or Walla Walla Valley AVA names as appellations or origin because The Rocks District of Milton-Freewater AVA is located within both of those AVAs, and both the Columbia Valley and Walla Walla Valley AVAs are multi-State AVAs that cover portions of Oregon and Washington. Additionally, their wines could be labeled simply with the political appellation ''Oregon,'' since wines labeled with a State appellation of origin may be fully finished in an adjacent State.

Several commenters stated that fully finishing their wines in Oregon, rather than in Washington, would be burdensome because they would have to either transport their grapes to the nearest Oregon custom crush facility, which is over 200 miles away from The Rocks District of Milton-Freewater AVA, or build their own private wineries in Oregon. Others commented that it makes little sense for TTB to allow the use of a single-State AVA name as an appellation of origin for a wine made from grapes that are grown in that viticultural area but are transported hundreds of miles across a single State, while prohibiting the use of that same AVA name on a wine simply because the grapes are transported across a State line to a winery located only 10 miles from the vineyard. Accordingly, these commenters asked TTB to amend its regulations to allow wines fully finished in Washington to be labeled with The Rocks District of Milton-Freewater AVA appellation of origin, so that consumers would have more detailed and accurate information as to the origin of the grapes used to make the wine.

TTB Analysis

TTB has determined that the concerns raised in the comments on Notice No. 142 have merit. TTB acknowledges that the current regulations would allow wine that is fully finished in Washington and made primarily from grapes grown within The Rocks District of Milton-Freewater AVA to be labeled only with the less specific ''Walla Walla Valley,'' ''Columbia Valley,'' or ''Oregon'' appellations of origin. TTB notes that the purpose of the AVA program is to provide consumers with additional information on the wines they may purchase by allowing vintners to describe more accurately the origin of the grapes used in the wine. Therefore, TTB is proposing to amend its regulations at § 4.25(e)(3)(iv) to allow wines that meet the requirements of § 4.25(e)(3)(i) and (ii) to be labeled with a single-State AVA name as an appellation of origin if the wine was fully finished either within the State in which the AVA is located or within an adjacent State.

TTB believes that vintners, grape growers, and consumers would benefit from the removal of the requirement in § 4.25(e)(3)(iv) that wines labeled with an AVA appellation of origin be fully finished within the same State as the AVA. Vintners would have a greater choice in both where they fully finish their wines and what appellation of origin they use. Grape growers within a single-State AVA may have more buyers for their grapes if vintners in adjacent States are allowed to label their wines with the AVA name. Finally, consumers would have a more accurate idea of the origin of the grapes in their wine if vintners who fully finish their wine in a State adjacent to the State where the AVA is located were able to label their wines with a more specific single-State AVA appellation of origin, such as The

Rocks District of Milton-Freewater, rather than a less specific State appellation of origin, such as Oregon, or even a broader multi-State appellation of origin, such as Columbia Valley.

TTB does not believe that the proposed amendment will cause consumer confusion. Section 4.25(b)(1)(ii) allows wines eligible for labeling with a State appellation of origin to be fully finished in an adjacent State. Section 4.25(e)(3)(iv) only requires wine labeled with any AVA appellation of origin to have been fully finished somewhere within the State in which the AVA is located, not within the AVA itself. Additionally, § 4.25(e)(3)(iv) currently allows wines eligible for labeling with a multi-State appellation of origin to be fully finished within any one of the States in which the AVA is located, not just within the State in which the grapes were grown. Since the promulgation of the appellation of origin regulations, TTB is not aware of any reported instances in which the regulations regarding the fully finishing of wine in an adjacent State resulted in consumer confusion relating to the origin of the wine or grapes. Therefore, TTB believes consumers are aware that the appellation of origin on a wine label is a statement of the origin of the grapes used to make the wine, and it would not be misleading or confusing to consumers if a wine labeled with a single-State AVA appellation of origin was actually fully finished in an adjacent State.

Therefore, for the reasons discussed above, TTB is proposing to amend its regulations to allow wines that meet the requirements of § 4.25(e)(3)(i) and (ii) to be labeled with a single-State AVA appellation of origin if the wine is fully finished either within the State in which the AVA is located or an adjacent State. If adopted, this amendment would bring the requirements for using a single-State AVA appellation of origin more in line with the requirements for using a State appellation of origin. This change would give grape growers and wine makers within a single-State AVA greater flexibility and more options in producing and marketing their products, options that are currently available to growers and wine makers within multi-State AVAs and those who use State appellations of origin. Additionally, the amendment would enable wine producers to provide consumers with more specific information on the origin of the grapes used to make the wine.

TTB's proposed changes to its appellations of origin regulations are limited to the scope of the commenters' request, which was, specifically, to allow wines to be labeled with a single-State AVA appellation of origin even if the wine was fully finished in a State adjacent to the State in which the AVA is located. Therefore, TTB is not proposing any additional changes to the regulations concerning the use of appellations of origin, including the percentage of grapes used in the wine that must come from the labeled appellation or the requirements for use of the term ''estate bottled'' in conjunction with an AVA appellation of origin.

Furthermore, TTB is not proposing any changes to the regulations concerning the use of multi-State AVA names as appellations of origin because the commenters' request was limited to single-State AVAs. Additionally, winemakers who label their wines with a multi-State AVA appellation of origin already have the flexibility to use winemaking facilities, including custom crush facilities, in at least one other State if they choose, unlike winemakers who label their wines with a single-State AVA appellation of origin. However, TTB is interested in hearing from winemakers whose wines are ineligible to be labeled with a multi-State AVA appellation of origin solely because they fully finish their wines in an adjacent State that is not part of the multi-State AVA.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on the proposed changes to the regulations regarding the use of AVA names as appellations of origin on wine labels. TTB is particularly interested in how effectively the proposed changes will further TTB's mission of ensuring that consumers are provided with adequate information about the identity of beverage alcohol products and preventing consumer deception. Please provide specific information in support of your comments.

Although the amendment in this notice of proposed rulemaking is limited to wines labeled with a single-State AVA appellation of origin, TTB is interested in comments on whether TTB should propose a similar amendment for wines labeled with multi-State AVA appellations of origin. Additionally, TTB would like comments on whether TTB should allow wines labeled with any domestic appellation of origin to be fully finished in any U.S. State. TTB may consider these comments for future rulemakings.

Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2015–0003 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 147 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 147 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not

enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this proposed rule and any online or mailed comments received about this proposal within Docket No. TTB–2015–0003 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 147. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.* For information on how to use Regulations.gov, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments merely provide industry members with more options and additional flexibility in wine labeling decisions. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Labeling, Packaging and containers, Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 4, Code of Federal Regulations, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Subpart C—Standards of Identity for Wine

■ 2. Section 4.25 is amended by revising paragraph (e)(3)(iv) to read as follows:

§ 4.25 Appellations of origin.

* * * * *

(e) * * *

(3) * * *

(iv) In the case of American wine, it has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class and type under § 4.22(b)) within the State the viticultural area is located in or an adjacent State, or, for a viticultural area located in two or more contiguous States, within one of the States in which the viticultural area is located.

* * * * *

Signed: December 2, 2014.

John J. Manfreda,

Administrator.

Approved: December 22, 2014.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2015–02552 Filed 2–6–15; 8:45 am]

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GULF COAST ECOSYSTEM RESTORATION COUNCIL

40 CFR Part 1850

[Docket Number: 110142015–1111–01]

Procedures for Disclosure of Records Under the Freedom of Information Act and Privacy Act

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Proposed rule.

SUMMARY: This Proposed Rule sets forth the Gulf Coast Ecosystem Restoration Council's (Council) proposed regulations regarding the Freedom of Information Act (FOIA), Privacy Act (PA), and declassification and public availability of national security information.

DATES: Comments are due March 11, 2015.

ADDRESSES: The Council invites comments on the proposed FOIA and PA regulations. Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Mail: Send to Gulf Coast Ecosystem Restoration Council, 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

Email: Send to *FOIAcomments@RestoreTheGulf.gov.*

In general, the Council will make such comments available for public inspection and copying on its Web site, *http://www.restorethegulf.gov/* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jeffrey Roberson at 202–482–1315.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act, Public Law 112–141 (July 6, 2012), codified at 33 U.S.C. 1321(t) and note, makes funds available for the restoration and protection of the Gulf Coast Region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). The Trust Fund will contain 80 percent of the administrative and civil penalties paid by the responsible parties after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. These funds will be invested and made available through five components of the RESTORE Act.

Two of the five components, the Comprehensive Plan and Spill Impact Components, are administered by the Council, an independent federal entity created by the RESTORE Act. Under the Comprehensive Plan Component (33 U.S.C. 1321(t)(2)), 30 percent of funds in the Trust Fund (plus interest) are available to develop a Comprehensive Plan to restore the ecosystem and the economy of the Gulf Coast Region. Under the Spill Impact Component (33 U.S.C. 1321(t)(3)), 30 percent of funds in the Trust Fund will be disbursed to the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) or their administrative agents based on an allocation formula established by the Council by regulation based on criteria in the RESTORE Act.

This Proposed Rule implements the Council's obligation to make records available under the Freedom of Information Act (FOIA) and Privacy Act (PA).

The Council will accept comments on the Proposed Rule for 30 days after publication, and publish a Final Rule after considering any comments.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that this Interim Final Rule will not have a significant economic impact on a substantial number of small entities. The Council hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, the fees the Council assesses are typically nominal. Further, the number of ''small entities'' that make FOIA requests is relatively small compared to the number of individuals who make such requests.

B. Paperwork Reduction Act

This rule does not contain a ''collection of information'' as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent federal entity that is composed of, in part, six federal agencies, including the Departments of Agriculture, Army, Commerce, and Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to this rule.

List of Subjects in 40 CFR Part 1850

Administrative practice and procedure, Freedom of Information, Privacy, Public information, Classified information.

For the reasons set forth in the preamble, the Gulf Coast Ecosystem Restoration Council proposes to add 40 CFR part 1850 of Chapter VIII, to read as follows:

PART 1850—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure Under the Freedom of Information Act

Subpart B—Production or Disclosure under the Privacy Act

Authority: 33 U.S.C. 1321(f); 5 U.S.C. 552; 5 U.S.C. 552a.

Subpart A—Production or Disclosure Under the Freedom of Information Act

§ 1850.1 Purpose and Scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. These regulations supplement the FOIA, which provides more detail regarding requesters' rights and the records the Council may release.

The regulations of this subpart provide information concerning the procedures by which records may be obtained from the Council. Official records of the Council made available pursuant to the requirements of the FOIA shall be furnished to members of the public only as prescribed by this subpart. Information routinely provided to the public as part of a regular Council activity (for example, press releases) may be provided to the public without following this subpart.

§ 1850.2 Definitions.

(a) *Commercial Use Request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) *Confidential Commercial Information* means commercial or financial information, obtained by the Council from a submitter, that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

(c) *Council* means to the Gulf Coast Ecosystem Restoration Council.

(d) *Days,* unless stated as ''calendar days,'' are business days and do not include Saturday, Sunday, or federal holidays.

(e) *Direct costs* means those expenses the Council actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents in response to a request made under § 1850.5. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the documents are stored.

(f) *Duplication* means the making a copy of a document, or other information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microfilm, audio-visual materials, or electronic records, among others. The Council shall honor a requester's specified preference of form or format of disclosure if the record is readily

reproducible with reasonable efforts in the requested form or format.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(h) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication. The three fee categories are: (1) Commercial requesters, (2) non-commercial scientific or educational institutions or news media requesters, and (3) all other requesters.

(i) *News* means information about current events or that would be of current interest to the public.

(j) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(k) *Perfected request* means a written FOIA request that meets all of the criteria set forth in § 1850.5.

(l) *Reading room* means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

(m) *Records* under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(n) *Records Management Officer* means the person designated by the Executive Director of the Council to oversee all aspects of the Council's records management program, including FOIA.

(o) *Representative of the news media, or news media requester,* means any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes the work to an audience. Examples of news-media entities are television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A ''freelance journalist'' shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but the Council shall also look to the past publication record of a requester in making this determination. The Council's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use of the material.

(p) *Requester* means any person, partnership, corporation, association, or foreign or State or local government, which has made a request to access a Council record under FOIA.

(q) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under § 1850.12 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(r) *Search* means the process of looking for and retrieving documents or information that is responsive to a request. Search time includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(s) *Submitter* means any person or entity from whom the Council obtains confidential commercial information, directly or indirectly.

(t) *Unusual circumstances* include situations in which the Council must:

(1) Search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(2) search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(3) consult with another Federal agency having a substantial interest in the determination of the FOIA request.

§ 1850.3 General Provisions.

The Council shall prepare an annual report to the Attorney General of the United States regarding its FOIA activities in accordance with 5 U.S.C. 552(e).

§ 1850.4 Public Reading Room.

The Council maintains an electronic public reading room on its Web site, *http://www.restorethegulf.gov,* which contains the records FOIA requires the Council to make available for public inspection and copying, as well as additional records of interest to the public.

§ 1850.5 Requirements for Making Requests.

(a) *Type of Records Made Available.* The Council shall make available upon request, pursuant to the procedures in this section and subject to the exceptions set forth in FOIA, all records of the Council that are not available under § 1850.4 of these procedures. The Council's policy is to make discretionary disclosures of records or information otherwise exempt from disclosure under FOIA unless the Council reasonably foresees that such disclosure would harm an interest protected by one or more FOIA exemptions, or otherwise prohibited by law. This policy does not create any enforceable right in court.

(b) *Procedures for Requesting Records.* A request for records shall reasonably describe the records in a way that enables Council staff to identify and produce the records with reasonable effort. The requester should include as much specific information as possible regarding dates, titles, and names of individuals. The Council may consider wide-ranging requests that lack specificity, require the production voluminous records, or contain broad descriptions of subject matters without reference to specific records to be ''not reasonably described'' and, therefore, not subject to further processing. For records ''not reasonably described,'' the Council may require the requestor or the requestor's agent to confer with a Council representative in order to attempt to verify the scope of the request and, if possible, narrow such request. All requests must be submitted in writing (including by email, fax or mail) to the Council's Records Management Officer. Requesters shall clearly mark a request as a ''Freedom of Information Act Request'' or ''FOIA

Request'' on the front of the envelope or in the subject line of the email.

(c*) Contents of Request.* The request, at minimum, shall contain the following information:

(1) The name, telephone number, and non-electronic address of the requester;

(2) Whether the requested information is intended for commercial use, or whether the requester represents an education or noncommercial scientific institution, or news media; and

(3) A statement agreeing to pay the applicable fees, identifying any fee limitation desired, or requesting a waiver or reduction of fees that satisfies § 1850.10(j)(1) to (3).

(d) *Perfected Requests.* The requester must meet all the requirements in this section to perfect a request. The Council will only process perfected requests.

(e) Requestors may submit a request for records, expedited processing or waiver of fees by writing directly to the Records Management Officer via email at *FOIArequest@restorethegulf.gov,* first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

(f) Any Council officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the Records Management Officer. Any Council officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

§ 1850.6 Responding to Requests.

(a) *Receipt and Processing.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Council by another agency, is the date the Council actually receives the request. The Council normally will process requests in the order they are received. However, in the Records Management Officer's discretion, the Council may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as defined by paragraph (d) of this section. When using multi-track processing, the Records Management Officer may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests to qualify for faster processing.

(b) *Authorization.* The Records Management Officer and other persons designated by the Council's Executive Director are solely authorized to grant or deny any request for Council records.

(c) *Timing.* (1) When a requester submits a request in accordance with § 1850.5, the Records Management Officer shall inform the requester of the determination concerning that request within 20 days from receipt of the request, unless ''unusual circumstances'' exist, as defined in § 1850.2(t).

(2) When additional time is required as a result of ''unusual circumstances,'' as defined in § 1850.2(t), the Records Management Officer shall, within the statutory 20 day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(3) The Council may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until the Council receives the information reasonably requested from the requester. The Council may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

(d) *Expedited Processing* (1) A requester may request expedited processing by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(2) The Records Management Officer will notify a requester of the determination to grant or deny a request for expedited processing within ten days of receipt of the request. If the Records Management Officer grants the request for expedited processing, the Council staff shall process the request as soon as practicable subject §§ 1850.10(d) and (e). If the Records Management Officer denies the request for expedited processing, the requester may file an appeal in accordance with the process described in § 1850.7.

(3) The Council staff will give expedited treatment to a request when the Records Management Officer determines the requester has established one of the following:

(i) Circumstances in which the lack of expedited treatment reasonably could be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(iii) The loss of substantial due process rights;

(iv) A matter of widespread and exceptional media interest raising possible questions about the Federal government's integrity which affects public confidence; or

(4) These procedures for expedited processing also apply to requests for expedited processing of administrative appeals.

(e) *Denials.* If the Records Management Officer denies the request in whole or part, the Records Management Officer will inform the requester in writing and include the following:

(1) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(2) An estimate of the volume of records or information withheld;

(3) The name and title or position of the person responsible for the denial of the request;

(4) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(5) The requirement that the appeal be received within 45 days of the date of the denial.

(f) *Referrals to Another Agency.* (1) When the Council receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the Council shall, except as provided in subparagraph (3) of this paragraph, refer the record to that agency for direct response to the requester. However, if the Council and the originating agency jointly agree that the Council is in the best position to respond regarding the record, then the record may be handled as a consultation.

(2) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name of the agency to which the record was referred, including that agency's FOIA contact information.

(3) The referral procedure is not appropriate where disclosure of the identity of the agency, typically a law enforcement agency or Intelligence Community agency, to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy and national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Council shall coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination shall then be conveyed to the requester by the Council.

(g) *Consulting with Another Agency.* In instances where a record is requested that originated with the Council and another agency has a significant interest in the record (or a portion thereof), the Council shall consult with that agency before responding to a requester. When the Council receives a request for a record (or a portion thereof) in its possession that originated with another agency that is not subject to the FOIA, the Council shall consult with that agency before responding to the requester.

(h) *Providing Responsive Records.* (1) Council staff shall send a copy of records or portions of records responsive to the request to the requester by regular United States mail to the address indicated in the request, unless the requester makes other acceptable arrangements or the Council deems it appropriate to send the records by other means. The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format. The Council need not provide more than one copy of any record to a requester.

(2) The Records Management Officer shall provide any reasonably segregable portion of a record that is responsive to the request after redacting those portions that are exempt under FOIA or this section.

(3) The Council is not required to create, compile, prepare or obtain from outside the Council a record to satisfy a request.

(i) *Prohibition Against Disclosure.* Except as provided in this subpart, no member or employee of the Council shall disclose or permit the disclosure of any non-public information of the Council to any person (other than Council members, employees, or agents properly entitled to such information for the performance of their official duties), unless required by law to do so.

§ 1850.7 Appeals.

(a) Requesters may administratively appeal an adverse determination regarding a request by writing directly to the General Counsel via email at *GeneralCounsel@restorethegulf.gov* or first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70113. Administrative appeals sent to other individuals or addresses are not considered perfected. An adverse determination is a denial of a request and includes decisions that: the requested record is exempt, in whole or in part; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has previously been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(b) FOIA administrative appeals must be in writing and should contain the phrase ''FOIA Appeal'' on the front of the envelope or in the subject line of the electronic mail.

(c) Administrative appeals shall include a copy of the original request, the initial denial (if any), and a statement explaining the reasons that the Council should make the requested records available and the initial denial was made in error.

(d) Requesters submitting an administrative appeal of an adverse determination must ensure that the Council receives the appeal within 45 days of the date of the denial letter.

(e) Upon receipt of an administrative appeal, Council staff shall inform the requester within 20 days of the determination on that appeal.

(f) The determination on an appeal shall be in writing and, when it denies the appeal, in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;

(2) A statement that the decision is final for the Council;

(3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 1850.8 Authority to Determine.

The Records Management Officer or Council Executive Director, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative appeal as provided in § 1850.7 of this subpart. The Council General Counsel shall deny or grant an administrative appeal requested under § 1850.7 of this subpart.

§ 1850.9 Maintenance of Files.

The Records Management Officer shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by a unique tracking number.

§ 1850.10 Fees.

(a) *Generally.* Except as provided elsewhere in this section, the Records Management Officer shall assess fees where applicable in accordance with this section for search, review, and duplication of records requested. The Records Management Officer shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b)(1) *Fee Schedule; Waiver of Fees.* The fees applicable to a request for Council records pursuant to § 1850.5 are set forth in the following uniform fee schedule:

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:.	
(A) Paper copy reproduction	$0.05 per page.

Service	Rate
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (including redaction)	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.

(2) *Search.* (i) The Council shall charge search fees for all requests, subject to the limitations of paragraph (b)(5) of this section. The Records Management Officer shall charge for time spent searching for responsive records, even if no responsive record is located or if the Records Management Officer withholds records located as entirely exempt from disclosure. Search fees shall equal the direct costs of conducting the search by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

ii. For computer searches of records, the Council will charge requesters the direct costs of conducting the search. In accordance with paragraph (f) of this section, however, the Council will charge certain requesters no search fee and certain other requesters are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs attributable to the salary of an operator/programmer performing a computer search.

(3) *Duplication.* The Council will charge duplication fees to all requesters, subject to the limitations of paragraph (b)(5) of this section. The fee for a paper photocopy of a record (no more than one copy of which need be supplied) is 5 cents per page. The Records Management Officer will charge the requester for the direct costs, including operator time, of making copies produced by computer, such as tapes or printouts. The Records Management Officer will charge a requester the direct costs of providing other forms of duplication.

(4) *Review.* The Council will charge review fees to requesters who make a commercial use request. Review fees generally are limited to the initial record review, *i.e.,* the review done when the Records Management Officer determines whether an exemption applies to a particular record at the initial request level. The Council will not charge a requester for additional review at the administrative appeal level. Review fees consist of the direct costs of conducting the review by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

(5) *Limitations on charging fees.* (i) The Council will not charge a search fee for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

ii. The Council will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

iii. The Council will not charge a fee to a requester whenever the total fee calculated under this paragraph is $25 or less for the request.

iv. Except for requesters seeking records for a commercial use, the Council will provide without charge the first 100 pages of duplication (or the cost equivalent) and the first two hours of search.

v. The provisions of paragraphs (5)(iii) and (5)(iv) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

vi. No search fees shall be charged to a requester when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

vii. No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or noncommercial scientific institution when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(c) *Payment Procedures.* All requesters shall pay the applicable fee before the Council sends copies of the requested records, unless the Records Management Official grants a fee waiver. Requesters must pay fees by check or money order made payable to the ''Treasury of the United States.'' Checks and money orders should be mailed to 500 Poydras Street, Suite 1117, New Orleans, LA 70113.

(d) *Advance Notification of Fees.* If the estimated charges exceed $25, the Records Management Officer shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Records Management Officer to reformulate the request to lower the costs. Council staff shall suspend processing the request until the requester provides the Records Management Officer with a written guarantee that the requester will make payment upon completion of processing (*i.e.,* upon completion of the search, review and duplication, but prior the Council sending copies of the requested records to the requester).

(e) *Advance Payment.* The Records Management Officer shall require advance payment of any fee estimated to exceed $250. The Records Management Officer also shall require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the Council shall refund the difference to the requester. The Council shall suspend the processing of the request and the statutory time period for responding to the request until the Records Management Officer receives the required payment.

(f) *Categories of Uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Records Management Officer shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Records Management Officer may seek additional clarification before categorizing the request.

(1) *Commercial use requester:* The fees for search, duplication, and review apply.

(2) *Educational institutions, non-commercial scientific institutions, or representatives of the news media requesters:* The fees for duplication apply. The Council will provide the first 100 pages of duplication free of charge.

(3) *All other requesters:* The fees for search and duplication apply. The Council will provide the first two hours of search time and the first 100 pages of duplication free of charge.

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Education and Non-commercial Scientific Institution Requesters	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and first 100 pages of duplication).

(g) *Nonproductive Search.* The Council may charge fees for search even if no responsive documents are found.

(h) *Interest Charges.* The Records Management Officer may assess interest charges on any unpaid bill starting on the 31st calendar day following the date the Council sent the bill to the requester. The Council will charge interest at the rate prescribed in 31 U.S.C. 3717 on fees payable in accordance with this section. The Council will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregated Requests.* A requester may not file multiple requests at the same time solely in order to avoid payment of fees. If the Council reasonably believes that a request, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Council may aggregate any such requests and charge accordingly. The Records Management Officer may reasonably presume that one requester making multiple requests on the same topic within a 30-day period has done so to avoid fees.

(j) *Waiver or Reduction of Fees.* To seek a waiver, a requester shall include the request for waiver or reduction of fees, and the justification for such based on the factors set forth in this paragraph, with the request for records to which it pertains. If a requester requests a waiver or reduction and has not indicated in writing an agreement to pay the applicable fees, the time for responding to the request for Council records shall not begin until the Records Management Officer makes a determination regarding the request for a waiver or reduction of fees.

(1) Records responsive to a request shall be furnished without charge, or at a reduced rate below that established in paragraph (b) of this section, where the Council determines, after consideration of all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Council will consider the following factors:

(i) The subject of the request: whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be likely to contribute to such an understanding.

(iii) The contribution to an understanding of the subject by the public: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) The significance of the contribution to public understanding: whether the disclosure is likely to contribute ''significantly'' to public understanding of Government operations or activities. The public's understanding of the subject in question prior to disclosure must be significantly enhanced by the disclosure.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Council will consider the following factors:

(i) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the requested disclosure. The Council shall consider any commercial interest of the requester (with reference to the definition of ''commercial use request'' in § 1850.2(b)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure if ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified if the public interest standard (paragraph (j)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. The Council shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraphs (j)(2) and (3) of this section, insofar as they apply to each request. The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) Where only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(6) The Records Management Officer shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the General Counsel in accordance with § 1850.7 of this subpart.

§ 1850.11 Requests for Confidential Treatment of Business Information.

(a) *Submission of Request.* Any submitter of information to the Council who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Council at the time the information is submitted or within a reasonable time after submission. These designations will expire ten years after the date of submission unless the submitter requests, and provides justification for, a longer period.

(b) *Form of Request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements indicating that release of the information would cause competitive harm generally are not sufficient to justify confidential treatment.

(c) *Designation and Separation of Confidential Material.* A submitter shall clearly mark all information it considers confidential as ''PROPRIETARY'' or ''BUSINESS CONFIDENTIAL'' in the submission and shall separate information so marked from other information submitted. Failure by the submitter to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

§ 1850.12 Requests for Access to Confidential Commercial or Financial Information.

(a) *Notice to Submitters.* The Council shall provide a submitter with prompt notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (b) of this section, except as provided in paragraph (e) of this section, in order to give the submitter an opportunity under paragraph (c) of this section to object to disclosure of any specified portion of that information. The notice shall either describe the business information requested or include copies of the requested records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(b) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The Council has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(c) *Opportunity to object to disclosure.* The Council shall allow a submitter seven days from the date of receipt of the written notice described in paragraph (a) of this section to provide the Council with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: that is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time frame specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The Council shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If the Council decides to disclose business information over a submitter's objection, the Council shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the Council intends to disclose the information seven days from the date the submitter receives the notice.

(e) *Exceptions to notice requirements.* The notice requirements of paragraphs (a) and (d) of this section shall not apply if:

(1) The Council determines that the information is exempt and will be withheld under a FOIA exemption, other than exemption (b)(4);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under this section or § 1850.11 appears obviously frivolous, except that, in such a case, the Council shall provide the submitter written notice of any final decision to disclose the information seven days from the date the submitter receives the notice.

(f) *Notice to requester.* The Council shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(g) *Notice of Lawsuits.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Council shall promptly notify the submitter.

§ 1850.13 Classified Information.

In processing a request for information classified under Executive Order 13526 or any other Executive Order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the Council or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by the Council because it contains information classified by another agency, the Council shall refer the responsibility for responding to the request to the agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with § 1850.7 of this subpart.

Subpart B—Production or Disclosure under the Privacy Act

§ 1850.31 Purpose and Scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Council under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of

the rights established by the Act with regard to records maintained by the Council. Council records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE), Equal Employment Opportunity Commission (EEOC) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Council in accordance with § 1850.33 of this subpart.

§ 1850.32 Definitions.

(a) For purposes of this subpart, the terms *individual, maintain, record,* and *system of records* shall have the meanings set forth in 5 U.S.C. 552a(a).

(b) *Working days* are business days and do not include Saturday, Sunday, or federal holidays.

§ 1850.33 Procedures for Requests Pertaining to Individual Records in a Record System.

(a) Any person who wishes to be notified if a system of records maintained by the Council contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the **Federal Register**. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice;

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail; and

(5) Any additional information required by § 1850.34 of this subpart for proper verification of identity or authority to access the information.

(b) Requests pertaining to records contained in a system of records established by the Council and for which the Council has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Council records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT–1 (General Personnel Records), OPM/GOVT–2 (Employee Performance File System Records), OPM/GOVT–3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), GSA/GOVT–4 (Contracted Travel Services Program), OPM/GOVT–5 (Recruiting, Examining and Placement Records), OPM/GOVT–6 (Personnel Research and Test Validation Records), OPM/GOVT–7 (Applicant Race, Sex, National Origin, and Disability Status Records), OPM/GOVT–9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT–10 (Employee Medical File System Records) and DOL/ESA–13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), or any other government-wide system of record not specifically listed, to the *restorecouncil@restorethegulf.gov*; and

(2) For systems OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests) and MSPB/GOVT–1 (Appeal and Case Records), to the General Counsel at *restorecouncil@restorethegulf.gov.*

(c) Any person whose request for access under paragraph (a) of this section is denied, may appeal that denial in accordance with § 1850.39 of this subpart.

§ 1850.34 Times, Places, and Requirements for Identification of Individuals Making Requests.

(a) If a person submitting a request for access under § 1850.33 has asked that the Council authorize a personal inspection of records pertaining to that person, and the appropriate Council official has granted that request, the requester shall present himself or herself at the time and place specified in the Council's response or arrange another, mutually convenient time with the appropriate Council official.

(b) Prior to personal inspection of the records, the requester shall present sufficient personal identification (*e.g.,* driver's license, employee identification card, social security card, credit cards). If the requester is unable to provide such identification, the requester shall complete and sign in the presence of a Council official a signed statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000.

(c) Any person who has requested access under § 1850.3 to records through personal inspection, and who wishes to be accompanied by another person or persons during this inspection, shall submit a written statement authorizing disclosure of the record in such person's or persons' presence.

(d) If an individual submitting a request by mail under § 1850.33 wishes to have copies furnished by mail, he or she must include with the request a signed and notarized statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000.

(e) A request filed by the parent of any minor or the legal guardian of any incompetent person shall: state the relationship of the requester to the individual to whom the record pertains; present sufficient identification; and, if not evident from information already available to the Council, present appropriate proof of the relationship or guardianship.

(f) A person making a request pursuant to a power of attorney must possess a specific power of attorney to make that request.

(g) No verification of identity will be required where the records sought are publicly available under the Freedom of Information Act.

§ 1850.35 Disclosure of Requested Information to Individuals.

(a) Upon receipt of request for notification as to whether the Council maintains a record about an individual and/or request for access to such record:

(1) The appropriate Council official shall acknowledge such request in writing within 10 working days of receipt of the request. Wherever practicable, the acknowledgement should contain the notification and/or determination required in paragraph (a)(2) of this section.

(2) The appropriate Council official shall provide, within 30 working days of receipt of the request, written notification to the requester as to the existence of the records and/or a determination as to whether or not access will be granted. In some cases, such as where records have to be recalled from the Federal Records Center, notification and/or a determination of access may be delayed.

In the event of such a delay, the Council official shall inform the requester of this fact, the reasons for the delay, and an estimate of the date on which notification and/or a determination will be forthcoming.

(3) If access to a record is granted, the determination shall indicate when and where the record will be available for personal inspection. If a copy of the record has been requested, the Council official shall mail that copy or retain it at the Council to present to the individual, upon receipt of a check or money order in an amount computed pursuant to § 1850.41.

(4) When access to a record is to be granted, the appropriate Council official will normally provide access within 30 working days of receipt of the request unless, for good cause shown, he or she is unable to do so, in which case the requester shall be informed within 30 working days of receipt of the request as to those reasons and when it is anticipated that access will be granted.

(5) The Council shall not deny any request under § 1850.33 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5 U.S.C. 552a.

(6) If the Council receives a request pursuant to § 1850.33 for access to records in a system of records it maintains which is so exempt, the appropriate Council official shall deny the request.

(b) Upon request, the appropriate Council official shall make available an accounting of disclosures pursuant to 5 U.S.C. 552a(c)(3), unless that system is exempted from the requirements of 5 U.S.C. 552a.

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial in accordance with § 1850.39 of this subpart. All appeals must be submitted in writing to the General Counsel at *GeneralCounsel@restorethegulf.gov*.

(d) Nothing in 5 U.S.C. 552a or this subpart allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1850.36 Special Procedures: Medical Records.

In the event the Council receives a request pursuant to § 1850.33 for access to medical records (including psychological records) and the appropriate Council official determines disclosure could be harmful to the individual to whom they relate, he or she may refuse to disclose the records directly to the requester but shall transmit them to a physician designated by that individual.

§ 1850.37 Request for Correction or Amendment to Record.

(a) Any person who wishes to request correction or amendment of any record pertaining to him or her that is contained in a system of records maintained by the Council, shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records. If the request is submitted by mail, the envelope should be clearly labeled ''Personal Information Amendment.'' The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records as set forth in the system notice to which the request relates;

(3) A description of the nature (*e.g.,* modification, addition or deletion) and substance of the correction or amendment requested; and

(4) Any other information specified in the system notice.

(b) Any person submitting a request pursuant to paragraph (a) of this section shall include sufficient information in support of that request to allow the Council to apply the standards set forth in 5 U.S.C. 552a(e) requiring the Council to maintain accurate, relevant, timely, and complete information.

(c) All requests to amend pertaining to personnel records described in § 1850.33(b) shall conform to the requirements of paragraphs (a) and (b) of this section and may be directed to the appropriate officials as indicated in § 1850.33(b). Such requests may also be directed to the system manager specified in the OPM's systems notices.

(d) Any person whose request under paragraph (a) of this section is denied may appeal that denial in accordance with § 1850.39.

§ 1850.38 Council Review of Request for Correction or Amendment to Record.

(a) When the Council receives a request for amendment or correction under § 1850.37(a), the appropriate Council official shall acknowledge that request in writing within 10 working days of receipt. He or she shall promptly either:

(1) Determine to grant all or any portion of a request for correction or amendment; and:

(i) Advise the individual of that determination;

(ii) Make the requested correction or amendment; and

(iii) Inform any person or agency outside the Council to whom the record has been disclosed, and where an accounting of that disclosure is maintained in accordance with 5 U.S.C. 552a(c), of the occurrence and substance of the correction or amendments; or

(2) Inform the requester of the refusal to amend the record in accordance with the request; the reason for the refusal; and the procedures whereby the requester can appeal the refusal to the General Counsel of the Council in accordance with § 1850.39.

(b) If the Council official informs the requester of the determination within the 10-day deadline, a separate acknowledgement is not required.

(c) In conducting the review of a request for correction or amendment, the Council official shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) In the event that the Council receives a notice of correction or amendment from another agency that pertains to records maintained by the Council, the Council shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in § 1850.35(c) shall be governed by the appropriate agency's regulations cited in that paragraph.

§ 1850.39 Appeal of Initial Adverse Agency Determination on Correction or Amendment.

(a) If a request for correction or amendment of a record in a system of records maintained by the Council is denied, the requester may appeal the determination in writing to the General Counsel at *GeneralCounsel@restorethegulf.gov*.

(b) The General Counsel shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the General Counsel shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the General Counsel determines to grant all or any portion of a request on an appeal submitted under paragraph

(a) of this section, he or she shall so inform the requester, and the appropriate Council official shall comply with the procedures set forth in § 1850.38(a)(1)(ii) and (iii).

(e) If the General Counsel determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the General Counsel;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the General Counsel deems it appropriate) a brief statement summarizing the General Counsel's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the General Counsel deems it appropriate) a brief statement of the General Counsel's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in Federal district court to seek a review of the determination of the General Counsel in accordance with 5 U.S.C. 552a(g).

(f) The General Counsel shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e)(3) and (4) of this section.

§ 1850.40 Disclosure of Record to Person Other than the Individual to Whom it Pertains.

The Counsel shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

§ 1850.41 Fees.

(a) No fee shall be charged for searches necessary to locate records. No charge shall be made if the total fees authorized are less than $1.00. Fees shall be charged for services rendered under this subpart as follows:

(1) For copies made by photocopy—$0.05 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, the Council will charge the direct cost incurred by the agency, including operator time. For other forms of duplication, the Council will charge the actual costs of that duplication.

(2) For attestation of documents—$25.00 per authenticating affidavit or declaration.

(3) For certification of documents—$50.00 per authenticating affidavit or declaration.

(b) All required fees shall be paid in full prior to issuance of requested copies of records. Requestors must pay fees by check or money order made payable to the ''Treasury of the United States.''

§ 1850.42 Penalties.

The criminal penalties which have been established for violations of the Privacy Act of 1974 are set forth in 5 U.S.C. 552a(i). Penalties are applicable to any officer or employee of the Council; to contractors and employees of such contractors who enter into contracts with the Council, and who are considered to be employees of the Council within the meaning of 5 U.S.C. 552a(m); and to any person who knowingly and willfully requests or obtains any record concerning an individual from the Council under false pretenses.

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2015–02163 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–EA–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 536

[GSAR Case 2008–G509; Docket 2008–0007; Sequence 24]

RIN 3090–AI81

General Services Administration Acquisition Regulation (GSAR); GSAR Case 2008–G509; Rewrite of GSAR Part 536, Construction and Architect-Engineer Contracts

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule; withdrawal.

SUMMARY: GSA has decided to withdraw GSAR Case 2008–G509; Rewrite of General Services Acquisition Regulation (GSAR) Part 536, Construction and Architect-Engineer Contracts. This rule is being withdrawn because the General Services Administration believes that an agency review of the current implementation plan for this GSAR case is appropriate to address the variety of issues included in the GSAR Part 536 Rewrite and to address strong stakeholder interest.

DATES: *Effective:* February 9, 2015 the proposed rule published December 2, 2008 at 73 FR 73199 is withdrawn.

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Christina Mullins, General Services Acquisition Policy Division, GSA, by phone at 202–969–4066 or by email at *Christina.Mullins@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat by mail at 1800 F Street NW., Washington, DC 20405, or by phone at 202–501–4755. Please cite GSAR Case 2008–G509, Proposed Rule; Withdrawal.

SUPPLEMENTARY INFORMATION: GSA has decided to withdraw GSAR Case 2008–G509; Rewrite of GSAR Part 536, Construction and Architect-Engineer Contracts, which was published in the **Federal Register** at 73 FR 73199, December 2, 2008.

This rule was a result of the GSA Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures. This rule proposed amendments to the GSAR to update text addressing GSAR Part 536: Subpart 536.101, Applicability; Subpart 536.201, Evaluation of Contractor Performance; Subpart 536.202, Specifications; Subpart 536.270, Exercise of Options; Subpart 536.271, Project Labor Agreements; Subpart 536.5, Contract Clauses; and Subpart 536.602, Selection of Firms for Architect-Engineer Contracts.

GSA is opening a series of new GSAR cases to separately address these issues and update the GSAM Part 536 coverage. The new GSAR cases will focus on the areas that require immediate modernization to position GSA to meet current and future needs of contracting activities.

List of Subjects in 48 CFR Part 536.

Government procurement.

Dated: February 3, 2015.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–02534 Filed 2–6–15; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register
Vol. 80, No. 26
Monday, February 9, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land and Resource Management Plan for Cibola National Forest Mountain Ranger Districts: Counties of Bernalillo, Catron, Cibola, Lincoln, McKinley, Sandoval, Sierra, Socorro, Torrance, and Valencia, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to revise the Cibola National Forest Mountain Ranger Districts Land and Resource Management Plan and prepare an associated Environmental Impact Statement.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is revising the existing Cibola Land and Resource Management Plan (hereafter referred to as Forest Plan) through development of an associated National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS). This notice describes the documents (assessment Report, summaries of public meetings, preliminary needs-for-change statements) available for review and how to obtain them; summarizes the needs for change to the existing Forest Plan; provides information concerning public participation and engagement, including the process for submitting comments; provides an estimated schedule for the planning process, including the time available for comments, and includes the names and addresses of agency contacts who can provide additional information.

DATES: Comments concerning the Needs for Change and Proposed Action provided in this notice will be most useful in the development of the revised plan and draft EIS if received by April 3, 2015. The agency expects to release a draft revised plan and draft EIS, developed through a collaborative public engagement process, by late Fall 2015 or Winter 2015/2016 and a final revised plan and final EIS by Summer 2017.

ADDRESSES: Send written comments to: Forest Planner, Cibola National Forest and National Grasslands, 2113 Osuna Rd. NE., Albuquerque, NM 87113.

To learn of locations of meetings and related information or to request copies of documents, go to *http://www.fs.usda.gov/detail/cibola/landmanagement/planning/?cid=fsbdev3_065627* or send an email to: *cibolamtnsplanrevision@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Champe Green, Forest Planner, Cibola National Forest and National Grasslands, Forest Service, USDA; 505–346–3900.

SUPPLEMENTARY INFORMATION: Elaine Kohrman, Forest Supervisor, Cibola National Forest and National Grasslands, 2113 Osuna Rd. NE., Albuquerque, NM 87113.

Nature of the Decision To Be Made

The Cibola National Forest is preparing an EIS to revise the existing Forest Plan. The EIS process is meant to inform the Forest Supervisor so she can decide which alternative best maintains and restores National Forest System terrestrial and aquatic resources while providing ecosystem services and multiple uses, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act.

The revised Forest Plan will describe the strategic intent of managing the Forest for the next 10 to 15 years and will address the identified needs for change to the existing land management plans. The revised Forest Plan will provide management direction in the form of desired conditions, objectives, standards, guidelines, and suitability of lands. It will identify delineation of new management areas and geographic areas across the Forest; identify the timber sale program quantity; make recommendations to Congress for Wilderness designation; and list rivers and streams eligible for inclusion in the National Wild and Scenic Rivers System. The revised Forest Plan will also provide a description of the plan area's distinctive roles and contributions within the broader landscape, identify watersheds that are a priority for maintenance or restoration, include a monitoring program, and contain information reflecting expected possible actions over the life of the plan.

The revised Forest Plan will provide strategic direction and a framework for decision making during the life of the plan, but it will not make site-specific project decisions and will not dictate day-to-day administrative activities needed to carry on the Forest Service's internal operations. The authorization of project-level activities will be based on the guidance/direction contained in the revised plan, but will occur through subsequent project specific decision-making, including NEPA analysis.

The revised Forest Plan will provide broad, strategic guidance designed to supplement, not replace, overarching laws and regulations. Though strategic guidance will be provided, no decisions will be made regarding the management of individual roads or trails, such as those that might be associated with a Travel Management plan under *36 CFR part 212.* Some issues, although important, are beyond the authority or control of a Forest Plan and will not be addressed during revision. For example, no decision regarding locatable mineral availability will be made, though standards will be brought forward or developed that would mitigate impacts should an availability decision be necessary in the future.

Needs for Change and Proposed Action

According to the National Forest Management Act, forest plans are to be revised on a 10 to 15 year cycle. The purpose and need for revising the current Forest Plan is (1) the Forest Plan is over 29 years old and 14 years beyond the intended plan period in NFMA, (2) to address changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research, and (3) to address the preliminary needs for change to the existing plan, which are summarized below. Extensive public and employee involvement, along with a science-based assessment of the conditions and trends of the Forest's ecological, social, and economic resources, have helped to identify theses preliminary needs for change to the existing Forest Plan.

The Proposed Action is to revise the Forest Plan to address these identified needs for change to the existing Forest Plan. Alternatives to the Proposed Action will be developed to address the

significant issues that will be identified through scoping.

What follows is a summary of the preliminary needs for change. A more fully developed description of the preliminary needs for change, is available for review on the plan revision Web site at: *http://www.fs.usda.gov/detail/cibola/landmanagement/planning/?cid=fsbdev3_065627.*

Throughout the Plan

There is a need to address, either by plan direction or other plan content, how all resource management should be prioritized given varying levels of funding.

There is a need to redraw the management area configuration used in the 1985 Plan. There is a need to update plan component language for the resources, goods, and services provided by the Cibola, and to remove plan components that are redundant with existing law, regulation, or policy.

There is a need to better recognize and potentially enhance the role of the Cibola National Forest in supporting local economies through both commodity production and services-such as recreation and tourism.

Across Multiple Resource Areas

There is a need to include plan direction addressing potential climate change effects and invasive species on the Cibola and to include a plan monitoring program.

There is a need to provide direction for an integrated resource approach to the use of planned fire and to address fuel accumulations in the Wildland Urban Interface (WUI).

Ecological Integrity

There is a need to provide direction for achieving sustainability and resiliency for and minimizing risks to vegetation community composition and structure and for restoring natural disturbance cycles where appropriate.

There is a need to provide direction to promote the achievement and maintenance of satisfactory soil condition.

There is a need to provide updated management direction for the protection, maintenance, and restoration of riparian vegetation and channel morphology in the plan area and for restoration of priority watersheds.

There is a need to provide direction on the sustainable management of groundwater, springs, wetlands, riparian areas, and perennial waters and their interconnections.

There is a need to update plan direction on providing a sustainable water supply for multiple uses (wildlife, livestock, recreation, and mining) and public water supplies.

There is a need to provide direction pertinent to riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands.

There is a need to update direction addressing air quality and forest management.

There is a need to develop plan direction to contribute to the recovery and conservation of federally recognized species, maintain viable populations of species of conservation concern, and maintain common and abundant species within the plan area.

There is a need to provide direction addressing habitat(s) for plant and animal species important to tribes and other traditional communities.

There is a need to provide direction for managing aquatic passage and terrestrial habitat connectivity.

Cultural and Historic Resources

There is a need to update direction on the stabilization and preservation of historic properties and address the role of management of historic properties in economic development.

There is a need to update management direction for American Indian and non-Indian traditional cultural properties and sacred sites.

There is a need to provide direction addressing management of historic and contemporary cultural uses by federally recognized Indian tribes and traditional communities not considered under tribal relations.

There is a need to address, at either the management or geographic area scale, the inventory and management of historic properties and other cultural resources and uses.

There is a need to provide direction that addresses the alignment of management of historic properties and landscapes, sacred sites, contemporary uses, and tribal cultural needs with other resource management objectives (particularly but not limited to ecosystem restoration). There is a need to provide direction on the identification and documentation of historic properties at risk of damage or destruction from catastrophic wildland fire.

There is a need to update direction addressing immitigable adverse effects to historic properties.

Areas of Tribal Importance

There is a need to update direction addressing consistency of activities with legally mandated trust responsibilities to tribes.

There is a need to update direction regarding sacred sites, sacred places, natural and cultural resources important to tribes, and requests for reburial of human remains and cultural items.

There is a need to update plan direction regarding administration of temporary closure orders to ensure privacy for tribes engaged in cultural and ceremonial activities.

There is a need to update direction on design, location, installation, maintenance, and abandonment of towers, facilities, and alternative infrastructure within communication and energy generation sites, giving due consideration to the value and importance of high places (mountaintops and ridges) that may be sacred sites or important cultural landscapes to tribes.

Multiple Uses

There is a need to provide plan direction for restoration treatments for those geographic areas and vegetation types that are most outside of the natural range of variability while considering capability of local infrastructure, contractors, and markets.

There is a need to provide direction for management and removal of miscellaneous forest products for commercial, noncommercial, tribal and/or land grant use.

There is a need to provide direction to the livestock grazing program that incorporates adaptive management toward ecosystem-based desired conditions.

Recreation

There is a need to integrate sustainable recreation management with that of other Forest resources and to provide guidance for managing a sustainable trails program while addressing use conflicts.

There is a need to provide management direction on the Continental Divide National Scenic Trail.

There is a need to provide guidance for managing recreation activities that occur in areas sensitive to resource degradation or at risk due to high visitation.

There is a need to update direction on managing recreational aviation activities, caves, and recreational activities associated with wildlife, fish, and cultural/historic sites.

There is a need to update plan direction and guidance for implementing the Recreation Opportunity Spectrum classification system and incorporating scenic integrity objectives for managing scenic resources.

Designated Areas

There is a need to update direction for managing designated Inventoried Roadless Areas, eligible Wild and Scenic Rivers, designated Research Natural Areas, and for managing designated wilderness.

There is a need to provide direction on management of areas that may be recommended for wilderness, during the interim period while Congress is considering designation.

There is a need to provide direction for areas that may be recommended for various other designations.

Infrastructure

There is a need to update direction on the management of infrastructure and for road maintenance in watersheds identified as being impaired or at-risk.

Land Status and Ownership, Use and Access

There is a need to update direction for obtaining legal access that addresses public, private landowner, tribal, land grant, and management needs and for progressing toward a contiguity of the land base and a reduction of small unmanageable tracts.

Energy, Minerals and Special Uses

There is a need to provide updated direction regarding management of recreational mining, mineral exploration and extraction, and the use of common minerals.

There is a need to update plan direction for managing existing or proposed transmission corridors and renewable energy generation.

There is a need to provide direction addressing safety concerns pertinent to maintenance activities associated with existing energy and communication corridors.

Public Involvement

The Cibola NF initiated public engagement activities in October 2012 and held 29 public meetings and collaborative work sessions through July 2014 to explain the plan revision process and to solicit comments, opinions, data, and ideas from members of the public, governmental entities, tribes, land grants, and non-governmental organizations. Six of these meetings introduced and explained the Cibola's Forest Plan revision effort and called for input and data pertinent to the assessment of conditions, trends, and risks to sustainability. Ten meetings were held to explain the draft assessment report subsequent to its release in April 2014 and to solicit comments, and 13 collaborative work sessions followed, focusing on the needs for change to the 1985 Cibola Forest Plan, based on findings from the assessment and comments received. Attendance at the 29 meetings numbered approximately 600, and nearly 1,800 comment letters or forms were received either at the meetings or by email, postal mail, Web-form, or a Web-based interactive mapping tool. Comments received were displayed on Web-based public reading rooms. Public input on both the assessment report and initial needs-for-change statements was used to update both documents. Information to the public was provided by a dedicated Forest Plan revision Web page and through mailings, flyers, news releases, Twitter, and radio and television interviews. Any comments related to the Cibola's assessment report that are received following the publication of this Notice may be considered in the affected environment sections of the draft and final environmental impact statements.

Scoping Process

Written comments received in response to this notice will be analyzed to complete the identification of the needs for change to the existing plan, further develop the proposed action (initial development of the proposed revised plan), and identify potential significant issues. Significant issues will, in turn, form the basis for developing alternatives to the proposed action. Comments on the preliminary needs for change and proposed action will be most valuable if received by April 3, 2015, and should clearly articulate the reviewer's opinions and concerns. Development of the proposed revised plan and associated EIS will occur with opportunities for public engagement throughout the revision process.

Comments received in response to this notice, including the names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered in the NEPA process; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents. See the below Objection process material, particularly the requirements for filing an objection, for how anonymous comments are handled during the objection process. Refer to the Forest's Web site *http://www.fs.usda.gov/detail/cibola/landmanagement/planning/?cid=fsbdev3_065627* for information on when public meetings will be scheduled for refining the proposed action and identifying possible alternatives to the proposed action.

Applicable Planning Rule

Preparation of the revised Forest Plan for the Cibola National Forest began with the assessment of the conditions and trends of the Forest's ecological, social, and economic resources, initiated under the planning procedures contained in the 2012 Forest Service planning rule (36 CFR 219 (2012)).

Permits or Licenses Required To Develop the Proposed Action

No permits or licenses are needed for the development or revision of a forest plan.

Decisions Will Be Subject to Objection

The decision to approve the revised Forest Plan for the Cibola National Forest Mountain Ranger Districts will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62). According to 36 CFR 219.53(a), those who may file an objection are individuals and entities who have submitted substantive formal comments related to plan revision during the opportunities provided for public comment during the planning process.

Documents Available for Review

The Needs for Change documentation, the Assessment Report including specialist reports, summaries of the public meetings and public meeting materials, and public comments are posted on the Forest's Web site at: *http://www.fs.usda.gov/detail/cibola/landmanagement/planning/?cid=fsbdev3_065627*.

As necessary or appropriate, the material available on this site will be further adjusted as part of the planning process using the provisions of the 2012 planning rule.

Authority: 16 U.S.C. 1600–1614; 36 CFR part 219 [77 FR 21260–21273].

Responsible Official.

Dated: February 2, 2015.

Elaine Kohrman,

Forest Supervisor.

[FR Doc. 2015–02545 Filed 2–6–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Logbook Family of Forms.

OMB Control Number: 0648–0213.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 543.

Average Hours per Response: Catcher Vessel trawl gear daily fishing logbook (DFL), 18 minutes per active response and 5 minutes per inactive response; Catcher vessel longline or pot gear DFL, 28 minutes per active response and 5 minutes per inactive response; 41 minutes per active response and 5 minutes per inactive response for Catcher/processor Longline and Pot Gear daily cumulative production logbook (DCPL); 23 minutes for Buying Station Report; 5 minutes for Shoreside Processor Check-in/Check-out Report; 20 minutes for Product Transfer Report and 14 minutes for Vessel Activity Report.

Burden Hours: 12,510.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801 *et seq.* authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service, Alaska Region (NMFS) manages: (1) The crab fisheries in the Exclusive Economic Zone (EEZ) waters off the coast of Alaska under the Fishery Management Plan for Bering Sea and Aleutian Islands Crab; (2) groundfish under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area; and (3) groundfish under the Fishery Management Plan for Groundfish of the Gulf of Alaska. The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

Vessels required to have a Federal Fisheries Permit (FFP) are issued free daily fishing DFLs for harvesters and DCPLs for processors to record groundfish, Crab Rationalization Program (CR) crab, Individual Fishing Quota (IFQ) halibut, IFQ sablefish, Western Alaska Community Development Quota Program (CDQ) halibut, and prohibited species catch (PSC) information. Catcher vessels under 60 ft (18.3 m) length overall are not required to maintain DFLs. Multiple self-copy logsheets within each logbook are available for distribution to the harvester, processor, observer program, and NOAA Fisheries Office for Law Enforcement. The longline or pot gear logbooks have an additional logsheet for submittal to the IPHC.

In addition to the logbooks, this collection includes the buying station report, check-in/out for shoreside processors, product transfer report, and U.S. vessel activity report.

Revision: Paper logbooks for catcher processors with trawl gear and motherships have been discontinued and replaced by eLogs in OMB Control No. 0648–0515.

Affected Public: Business and other for-profit organizations; individuals or households.

Frequency: Daily and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 4, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–02578 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Game Fish Tagging Report.

OMB Control Number: 0648–0247.

Form Number(s): NOAA 88–162.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 10,000.

Average Hours per Response: 2 minutes.

Burden Hours: 333.

Needs and Uses: This request is for extension of a current information collection.

The Cooperative Game Fish Tagging Program was initiated in 1971 as part of a comprehensive research program resulting from passage of Public Law 86–359, Study of Migratory Game Fish, and other legislative acts under which the National Marine Fisheries Service (NMFS) operates. The Cooperative Tagging Center attempts to determine the migration patterns of, and other biological information for, billfish, tunas, and swordfish. The fish tagging report is provided to the angler with the tags, and he/she fills out the card with the information when a fish is tagged and mails it to NMFS. Information on each species is used by NMFS to determine migratory patterns, distance traveled, stock boundaries, age, and growth. These data are necessary input for developing management criteria by regional fishery management councils, states, and NMFS.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 4, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–02576 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 150127079–5079–01]

Foreign Availability Determination: Anisotropic Plasma Dry Etching Equipment

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Foreign Availability Determination.

SUMMARY: This notice announces that the Under Secretary for Industry and

Security has determined that foreign availability exists for anisotropic plasma dry etching equipment controlled for national security reasons under Export Control Classification Number (ECCN) 3B001.c on the Commerce Control List. This foreign availability determination is in response to a submission from the Semiconductor Equipment and Materials International (SEMI) industry association. The Bureau of Industry and Security (BIS) has provided a proposal to the Department of State to submit to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies to remove the 3.B.1.c control from the Arrangement's Dual-Use List. This determination was made pursuant to Section 5(f) of the Export Administration Act of 1979, as amended, and Part 768 of the EAR.

ADDRESSES: BIS welcomes comments on this foreign availability determination on an ongoing basis. You may submit comments by any of the following methods:

- *Email: EtchComments@bis.doc.gov.* Include the phrase ''Anisotropic Plasma Dry Etching Equipment Determination'' in the subject line;
- *Mail:* Orestes Theocharides, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Room 1093, 1401 Constitution Avenue NW., Washington, DC 20230; or
- *Fax* to (202) 482–5361. Include the phrase ''Anisotropic Plasma Dry Etching Equipment Determination'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Gerard J. Horner, Office of Technology Evaluation, Department of Commerce, Room 1093, 1401 Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–2078; email: *gerard.horner@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 5(f) of the Export Administration Act of 1979, as amended (EAA), authorizes the Secretary of Commerce to conduct foreign availability assessments to examine and evaluate the effectiveness of U.S. export controls on certain items that are controlled for national security reasons under the Export Administration Regulations (EAR) (15 CFR parts 730–774). The Bureau of Industry and Security (BIS) has been delegated from the Secretary of Commerce the responsibility for conducting these assessments and issuing a final foreign availability determination. Part 768 of the EAR sets forth the procedures related to foreign availability assessments.

On July 16, 2014, BIS received a foreign availability submission from the Semiconductor Equipment and Materials International (SEMI) industry association, a group of companies that does business all over the world and that serve the manufacturing supply chain for the micro- and nano-electronics industries. SEMI's July 16, 2014 submission asserts the foreign availability of anisotropic plasma dry etching equipment in China. This type of semiconductor etching equipment is controlled for national security reasons under Export Control Classification Number (ECCN) 3B001.c on the Commerce Control List (CCL). It is used in the process for producing dual-use semiconductor devices such as flash memories, microwave monolithic integrated circuits, transistors, and analog-to-digital-converters. These devices are used in civil and military applications such as radars, point-to-point radio communications, microprocessors, cellular infrastructure, and satellite communications. The national security control BIS has applied to anisotropic plasma dry etching equipment implements the Wassenaar Arrangement's Dual-Use List 3.B.1.c control. SEMI's submission asserts that anisotropic plasma dry etch equipment of comparable quality to that subject to control under ECCN 3B001.c is available-in-fact from China in sufficient quantities to render the U.S. export control of the equipment ineffective.

After reviewing SEMI's submission, on September 8, 2014, BIS published in the **Federal Register** a Notice of Foreign Availability Assessment: Anisotropic Plasma Dry Etching Equipment (79 FR 53166), which formally initiated a foreign availability assessment. To carry out the assessment, BIS conducted interagency meetings with stakeholders, obtained input from the exporting community, and visited, in China, a producer of anisotropic plasma dry etching equipment meeting the 3B001.c control parameters, and a foundry using a Chinese-produced anisotropic plasma dry etching tool. As a result of BIS's analysis of the data collected through the assessment, BIS recommended that I determine that the etching equipment of ECCN 3B001.c capability is available-in-fact to China, from a non-U.S. (Chinese) source, in sufficient quantity, and of comparable quality so that continuation of the existing national security export control would be ineffective in achieving its purpose.

After reviewing the assessment and recommendation, I determined that anisotropic plasma dry etching equipment controlled for national security reasons under ECCN 3B001.c on the CCL is foreign available to China. Consequently, BIS has submitted a proposal to the Department of State to remove the Wassenaar Arrangement's Dual-Use List 3.B.1.c control.

Dated: February 4, 2015.

Eric L. Hirschhorn,

Under Secretary of Industry and Security.

[FR Doc. 2015–02681 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD753

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Advisory Panel will hold a public meeting.

DATES: The meeting will be held Tuesday, February 24, 2015, from 9 a.m. until noon.

ADDRESSES: The meeting will be held via Webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the proposed agenda, Webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a fishery performance report by the Council's Golden Tilefish Advisory Panel (AP). The intent of this report is to facilitate a venue for structured input from the Advisory Panel members for the Golden Tilefish specifications process, including recommendations by the Council and its Scientific and Statistical Committee (SSC).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified 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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 3, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–02508 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD754

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, February 24, 2015 at 9 a.m.

ADDRESSES: *Meeting address:* The meetings will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss comments on Omnibus Essential Fish Habitat Amendment 2. Written public comments were submitted between October 10, 2014 and January 8, 2015 and in-person comments were provided at twelve public hearings held during November, December, and January. They will also begin the process of developing final preferred alternative recommendations for the full Council. They will discuss other business as necessary.

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 this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 3, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–02507 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD755

Gulf of Mexico Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of the Ecosystem Scientific and Statistical Committee.

DATES: The meeting will be held from 9 a.m. until 5 p.m. on Wednesday, February 25, 2015.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council Office, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Morgan Kilgour, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *morgan.kilgour@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Ecosystem Scientific and Statistical Committee Agenda, Tuesday, February 25, 2015, 9 a.m. Until 5 p.m.

1. Introductions and Adoption of Agenda
2. Approval of Ecosystem portion of June 3–5, 2014 Standing, Special Reef Fish, and Ecosystem SSC summary minutes
3. Scope of Work
4. Selection of SSC representative at March 30–April 3, 2015 Council meeting (Biloxi, MS)
5. Madison-Swanson and Steamboat Lumps Marine Reserves Reports
   a. Protection of grouper and red snapper spawning in shelf-edge marine reserves of the northeastern Gulf of Mexico: Demographics, movements, survival and spillover effects (2011)
   b. NMFS monitoring report and work from Coral Reef Conservation Program
   c. Grouper and spawning aggregations and reserves
6. Report of the Ecosystem Based Fisheries Management Plan Working Group
   a. Goals and Objectives
   b. Ecosystem and Socioeconomic Information Needs
   c. Next Steps
7. Other Ecosystem SSC Business
   a. Summary on Lenfest Task Force Meeting

—Adjourn—

For meeting materials see folder ''Ecosystem Scientific and Statistical Committee meeting—2015–02'' on Gulf Council file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. The Agenda is subject to change.

The meeting will be Webcast over the Internet. A link to the Webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 4, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–02565 Filed 2–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a meeting of the DoD Board of Actuaries. This meeting will be open to the public.

DATES: Thursday, July 16, from 1:00 p.m. to 5:00 p.m. and Friday, July 17, 2015, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: 4800 Mark Center Drive, Conference Room 4, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Kathleen Ludwig at the Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 05E22, Alexandria, VA 22350–7000. Phone: 571–372–1993. Email: *Kathleen.A.Ludwig.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provision 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 for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 *et. seq.*), and 10 U.S.C. 1175.

Agenda

Education Benefits Fund (July 16, 1:00 p.m.–5:00 p.m.)

1. Briefing on Investment Experience.
2. September 30, 2014, Valuation Proposed Economic Assumptions *.
3. September 30, 2014, Valuation Proposed Methods and Assumptions—Reserve Programs *.
4. September 30, 2014, Valuation Proposed Methods and Assumptions—Active Duty Programs *.
5. Developments in Education Benefits.

Military Retirement Fund (July 17, 10:00 a.m.–1:00 p.m.)

1. Briefing on Investment Experience.
2. September 30, 2014, Valuation of the Military Retirement Fund *.
3. Proposed Methods and Assumptions for September 30, 2015 Valuation of the Military Retirement Fund *.
4. Proposed Methods and Assumptions for September 30, 2014, Voluntary Separation Incentive (VSI) Fund Valuation *.
5. Recent and Proposed Legislation.

* Board approval required.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first come basis. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 16, 2015. Failure to make the necessary arrangements will result in building access being denied. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Kathleen Ludwig at 571- 372–1993, or *Kathleen.A.Ludwig.civ@mail.mil,* by June 16, 2015.

Dated: February 4, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–02564 Filed 2–6–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

ACTION: Opportunity for the public to make written comments concerning the NACIQI Policy Recommendations Report dated January 2, 2015, under Section 114(d)(2)(B) of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1011c(d)(2)(B).

NACIQI's Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This notice invites the public to submit written comments concerning

the NACIQI Policy Recommendations Report dated January 2, 2015, under Section 114(d)(2)(B) of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1011c(d)(2)(B).

Submission of Written Comments Regarding the Committee's Policy Recommendations: The Committee published its draft policy recommendations at *http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2014-fall/naciqi-draft-recomendations-report-01012015.pdf.*

on January 23, 2015, and invites written comments. Comments must be received by February 28, 2015, in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: Policy Recommendations 2014''. The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Please do not send material directly to the NACIQI members.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 502–7874, or email *Carol.Griffiths@ed.gov.*

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.

Authority: Section 114(d)(2)(B) of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. 1011c(d)(2)(B).

Ericka M. Miller,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2015–02562 Filed 2–6–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–009]

Public Utility District No. 1 of Okanogan County; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 2, 2015.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Management Plan pursuant to Article 410.

b. *Project No:* 12569–009.

c. *Date Filed:* June 27, 2014.

d. *Applicant:* Public Utility District No. 1 of Okanogan County.

e. *Name of Project:* Enloe Hydroelectric Project.

f. *Location:* The project is located on the Similkameen River at river mile 8.8 near the city of Oroville, in Okanogan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Dan Boettger, Director of Regulatory and Environmental Affairs, Public Utility District No. 1 of Okanogan County, General Offices, 1331 Second Avenue N., P.O. Box 912, Okanogan, WA 98840–0912, (509) 422–8425.

i. *FERC Contact:* Mary Karwoski at (202) 502–6543, *mary.karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 4, 2015.

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.* 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (p–12569–009) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee is requesting Commission approval of the Recreation Management Plan as required by Article 410 of the project license. Above the dam improvements include a park-like area with parking, picnic areas, campsites, vault toilet, and information and interpretive signs. Below the dam improvements include trail improvements with staircase and elevated wooden structure for river access and 2 interpretive signs. Other measures include: improved access road, safety and security fencing, clean-up and restoration of a wooded area on the east bank, and river access take-out at Miners Flat.

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* using the ''eLibrary'' link. 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 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. Agencies may obtain copies of

the application directly from the applicant.

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, respectively. 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 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 commenting, 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. Any filing made by an intervenor 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 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02433 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–41–000]

Essential Power Rock Springs, LLC Essential Power OPP, LLC Lakewood Cogeneration, L.P. v. PJM Interconnection, LLC; Notice of Complaint

Take notice that on January 30, 2015 pursuant to section 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, 16 U.S.C. 824(e) and 825(e), Essential Power Rock Springs, LLC, Essential Power OPP, LLC, and Lakewood Cogeneration, L.P. (Complainants) filed a formal complaint against PJM Interconnection, LLC (Respondent or PJM) challenging the application of certain PJM rules and notices that required generators to submit certain binding elections based on the proposed regulatory changes for which the Respondent is seeking approval in its December 12, 2014 Capacity Performance Filing, as more fully explained in the complaint.

The Complainants certify that copies of the complaint were served on the contacts for the Respondent 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 February 19, 2015.

Dated: February 2, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02432 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN15–4–000]

Maxim Power Corporation, Maxim Power (USA), Inc.; Maxim Power (USA) Holding Company Inc.; Pawtucket Power Holding Co., LLC; Pittsfield Generating Company, LP; Kyle Mitton; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on February 2, 2015 in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2014), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2014), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Larry Gasteiger
Sean Collins
Gabriel S. Sterling
Nicole Brisker
Emily Scruggs
Eric Ciccoretti
Jeremy Larrieu
Christopher Onisick

Dated: February 2, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02430 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13213–003]

Lock 14 Hydro Partners, LLC; Kentucky Heidelberg Hydroelectric Project; Notice of Revised Restricted Service List

Rule 2010 of the Federal Energy Regulatory Commission's (Commission)

Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Heidelberg Hydroelectric Project.

On November 21, 2013, Commission staff established a restricted service list for the Heidelberg Hydroelectric Project. Since that time, changes have occurred and therefore, the restricted service list is revised as follows:

Replace ''Jill Howe, Kentucky Heritage Council'' with ''Kary Stackelbeck, or Representative, Kentucky Heritage Council.''

Dated: February 2, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02434 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13214–003]

Lock 12 Hydro Partners, LLC; Kentucky Ravenna Hydroelectric Project; Notice of Revised Restricted Service List

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Ravenna Hydroelectric Project.

On November 21, 2013, Commission staff established a restricted service list for the Ravenna Hydroelectric Project. Since that time, changes have occurred and therefore, the restricted service list is revised as follows:

Replace ''Jill Howe, Kentucky Heritage Council'' with ''Kary Stackelbeck, or Representative, Kentucky Heritage Council.''

Dated: February 2, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02429 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD15–4–000]

Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Supplemental Notice of Technical Conferences

As announced in the Notices issued on December 9, 2014 [1] and January 6, 2015,[2] the Federal Energy Regulatory Commission (Commission) will hold a series of technical conferences to discuss implications of compliance approaches to the Clean Power Plan proposed rule, issued by the Environmental Protection Agency (EPA) on June 2, 2014.[3] The technical conferences will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure. The Commission will hold a National Overview technical conference on February 19, 2015, from approximately 10:00 a.m. to 5:45 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This conference is free of charge and open to the public. The agenda and list of speakers for the National Overview technical conference is attached to this Supplemental Notice of Technical Conferences.

If you have not already done so, registration for the National Overview technical conference is available at *https://www.ferc.gov/whats-new/registration/02-19-15-form.asp.* Those interested in attending the National Overview conference are encouraged to register by close of business on February 13, 2015. The Commission will provide details on registration for the regional technical conferences in subsequent notices.

The Commission will post information on the technical conferences on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the conferences. The National Overview technical conference will also be webcast and transcribed. The webcast of the National Overview technical conference will be available through a link on the Commission's Calendar of Events available at *http://www.ferc.gov.* The event within the Calendar of Events will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. ((202) 347–3700 or (800) 336–6646).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a Fax to (202) 208–2106 with the required accommodations.

[1] Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15–4–000, (Dec. 9, 2014) (Notice of Technical Conferences), *available at http://www.ferc.gov/CalendarFiles/20141209165657-AD15-4-000TC.pdf.*

[2] Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15–4–000, (Jan. 6, 2014) (Supplemental Notice of Technical Conferences), *available at http://www.ferc.gov/CalendarFiles/20150106170115-AD15-4-000TC1.pdf.*

[3] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FR 34,830 (2014) (Proposed Rule), *available at http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13725.pdf.*

For more information about the technical conferences, please contact:

Logistical Information, Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Legal Information, Alan Rukin, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8502, *alan.rukin@ferc.gov.*

Technical Information, Matthew Jentgen, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8725, *matthew.jentgen@ferc.gov.*

Technical Information, Michael Gildea, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8420, *michael.gildea@ferc.gov.*

Dated: February 2, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–02431 Filed 2–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Rate Order No. WAPA–171

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of electric service rate-setting formula and adjustment to base charge and rates.

SUMMARY: The Western Area Power Administration (Western) is proposing to extend the existing rate-setting formula for the Boulder Canyon Project (BCP) through September 30, 2020, and adjust the annual calculation for fiscal year (FY 2016) Base Charge and Rates under proposed Rate Schedule BCP–F9 (Proposed Base Charge and Rates). The existing Rate Schedule BCP–F8 expires on September 30, 2015. This notice of proposed extension of the electric service rate-setting formula and adjustment of the base charge and rates is issued pursuant to 10 CFR part 903.23(a) and 10 CFR part 904. Publication of this **Federal Register** notice begins the formal process for the proposed extension of the electric service rate-setting formula and the annual calculation of the base charge and rates.

DATES: The consultation and comment period begins today and will end May 11, 2015. Western will hold a public information forum on April 1, 2015, beginning at 10:30 a.m. MST, in Phoenix, Arizona. Western will accept oral and written comments at a public comment forum on April 29, 2015, beginning at 10:30 a.m. MST, in Phoenix, Arizona. Western will also accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Regional Customer Service Office, located at 615 South 43rd Avenue, Phoenix, Arizona, on the dates cited above. Written comments should be sent to Mr. Ronald E. Moulton, Desert Southwest Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, email *Moulton@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray, Rates Manager. Western will post comments received via letter, fax, and email to its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm* after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision making process. For details regarding access to Western facilities, see the Attendance at the Forum section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The existing Rate Schedule BCP–F8, Rate Order No. WAPA–150 was approved by the Federal Energy Regulatory Commission (FERC) for the period beginning October 1, 2010, and ending September 30, 2015.[1] The existing rate schedule consists of a Base Charge and Rates for electric service. The base charge and rates provide adequate revenue to pay all annual costs, including interest expense, and repay investment within the allowable period. The base charge and rates are calculated annually to ensure repayment of the project within the cost recovery criteria set forth in DOE Order RA 6120.2.

Western proposes to extend the existing electric service rate-setting formula through September 30, 2020, under Rate Order No. WAPA–171, and seek approval of the annual calculation for the FY 2016 Proposed Base Charge and Rates. Under Rate Schedule BCP–F9, Rate Order No. WAPA–171, the Proposed Base Charge and Rates for BCP electric service are expected to increase as a result of projected replacements costs and visitor center costs. The following table lists the Proposed Base Charge and Rates, however, these amounts will change based on actual data published in the FY 2014 financial statements, which are not yet available.

TABLE 1—SUMMARY OF ELECTRIC SERVICE BASE CHARGE AND RATES

	Existing base charge & rates effective October 1, 2014	Proposed base charge & rates effective October 1, 2015	Percent change
Composite (mills/kWh)	16.28	19.77	21.43
Base Charge ($)	$61,008,518	$69,276,468	13.55
Energy Rate (mills/kWh)	8.14	9.89	21.43
Capacity Rate ($/kWmonth)	$1.61	$1.82	13.41

Legal Authority

Since the proposed rates constitute a major adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and a public comment forum. Western will review all timely public comments and make amendments or adjustment to the proposal, as appropriate, consistent

[1] WAPA–150 was approved by the Deputy Secretary of Energy on September 16, 2010 (75 FR 57912 (September 23, 2010)), and confirmed and approved by FERC on a final basis on December 9, 2010, in Docket No. EF10–7–000 (133 FERC ¶ 62,229).

with 10 CFR 903.23(a) and 10 CFR part 904.

Western is establishing the electric service Base Charge and Rates for BCP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Attendance at the Forum

Access to Western facilities is controlled. If you are a U.S. citizen, please be sure to bring an official form of picture identification (that meets the requirement of the Real ID Act), such as a driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, which you will be asked to show prior to signing in at Western.

If you are a foreign national and plan to attend, please contact Mr. Jack Murray, Rates Manager, (602) 605–2442, email *jmurray@wapa.gov,* immediately to obtain the necessary form for admittance at Western. To allow time for background checks this form must be completed at least 30 days in advance for visitors from non-sensitive countries; and 45 days in advance for visitors from sensitive countries. Failure to complete this approval process may result in denial of visit.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents that Western initiated or used to develop the proposed base charge and rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on Western's Web site at: *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347 *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 6, 2015.

Mark A. Gabriel,

Administrator.

[FR Doc. 2015–02559 Filed 2–6–15; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2014–0857; FRL–9922–64–OARM]

Proposed Information Collection Request; Comment Request; Background Checks for Contractor Employees (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Background Checks for Contractor Employees (Renewal)'' (EPA ICR No. 2159.06, OMB Control No. 2030–0043) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 10, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2014–0857 online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Dianne Lyles, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–6111; email address: *lyles.dianne@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package

will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials, or hazardous chemicals that may potentially affect communities and the surrounding environment. The Agency may request contractors responding to any of these types of incidents to conduct background checks and apply Government-established suitability criteria in Title 5 CFR Administrative Personnel 731.104 Appointments Subject to Investigation, 732.201 Sensitivity Level Designations and Investigative Requirements, and 736.102 Notice to Investigative Sources when determining whether employees are acceptable to perform on given sites or on specific projects. In addition to emergency response contractors, EPA may require background checks for contractor personnel working in sensitive sites or sensitive projects. The background checks and application of the Government's suitability criteria must be completed prior to contract employee performance. The contractor shall maintain records associated with all background checks. Background checks cover citizenship or valid visa status, criminal convictions, weapons offenses, felony convictions, and parties prohibited from receiving federal contracts.

Form numbers: None.

Respondents/affected entities: Private Contractors.

Respondent's obligation to respond: Required to obtain a benefit per Title 5 CFR Administrative Personnel 731.104 Appointments Subject to Investigation, 732.201 Sensitivity Level Designations and Investigative Requirements, and 736.102 Notice to Investigative Sources.

Estimated number of respondents: 1,000.

Frequency of response: Annual.

Total estimated burden: 1,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $186,730 (per year), includes $0 annualized capital or operation & maintenance (O&M) costs.

Changes in Estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: January 28, 2015.

John R. Bashista,

Director, Office of Acquisition Management.

[FR Doc. 2015–02484 Filed 2–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9922–84–OA]

Announcement of the Board of Directors for the National Environmental Education Foundation

AGENCY: Office of External Affairs and Environmental Education, Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The National Environmental Education and Training Foundation (doing business as The National Environmental Education Foundation or NEEF) was created by Section 10 of Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation promotes innovative environmental education and training programs such as environmental education for medical healthcare providers and broadcast meteorologists; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public. The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education Foundation Board of Directors. The appointee is Raul Perea-Henze, M.D., M.P.H., managing director of HORUS Advisors as a strategy advisor in healthcare, global affairs and government relations.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Mr. Brian Bond, Senior Advisor to the Administrator for Public Engagement, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

SUPPLEMENTARY INFORMATION:

Additional Considerations

Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

This appointee will join the current Board members which include:

- Decker Anstrom (NEEF Chairman) Former U.S. Ambassador, Retired Chairman, The Weather Channel Companies
- Trish Silber (NEEF Vice Chair) President, Aliniad Consulting Partners, Inc.
- Diane Wood (NEEF Secretary) President, National Environmental Education Foundation
- Carlos Alcazar, Founder and Chairman, Culture ONE World
- Megan Reilly Cayten, Co-Founder and Chief Executive Officer, Catrinka, LLC
- Philippe Cousteau, Co-Founder and CEO, EarthEcho International
- David M. Kiser, Vice President, Environment, Health, Safety and Sustainability, International Paper
- Wonya Lucas, President, Lucas Strategic Consulting
- Shannon Schuyler, Principal, Corporate Responsibility Leader, PricewaterhouseCoopers (PwC)
- Jacqueline M. Thomas, Vice President of Corporate Responsibility, Toyota Motor Sales USA Inc.

Background

Section 10(a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) Subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: February 3, 2015.

Gina McCarthy,

Administrator.

Raul Perea-Henze, M.D., M.P.H.

Dr. Perea-Henze, M.D., M.P.H. is currently managing director of HORUS Advisors as a strategy advisor in healthcare, global affairs and government relations.

He worked in the private sector, as senior executive at Merck & Co., Inc. and Pfizer Inc. Among his many responsibilities at these companies he assisted in shaping corporate responsibility, philanthropy and external affairs participating in committees at the Institute of Medicine, World Medical Association, The Clinton Global Initiative and the Gates Foundation.

In the public sector, he served as assistant secretary for policy and planning at the U.S. Department of Veterans Affairs where he had direct oversight for a $9 billion portfolio of priority programs. Before joining the VA in 2010, he was an advisor to the Obama Presidential Transition Team. He was deputy assistant secretary for management and budget at the U.S. Department of Commerce from 1999 to 2001.

He has a medical degree from the University of Chihuahua in Mexico and a master's degree in public health from Yale University. We believe he will be a great addition to the NEEF board and we respectfully submit his name for appointment to the NEEF Board of Directors.

[FR Doc. 2015–02574 Filed 2–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9922–83–OA]

Announcement of the Board of Directors for the National Environmental Education Foundation

AGENCY: Office of External Affairs and Environmental Education, Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The National Environmental Education and Training Foundation (doing business as The National Environmental Education Foundation or NEEF) was created by Section 10 of Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation promotes innovative environmental education and training programs such as environmental education for medical healthcare providers and broadcast meteorologists; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public. The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education Foundation Board of Directors. The appointee is George Basile, Ph.D., a Professor in the School of Sustainability at Arizona State University (ASU), a Senior Sustainability Scientist in ASU's Global Institute of Sustainability and Affiliate Professor in the School on Public Affairs.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Mr. Brian Bond, Senior Advisor to the Administrator for Public Engagement, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

SUPPLEMENTARY INFORMATION:

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

This appointee will join the current Board members which include:

• Decker Anstrom (NEEF Chairman) Former U.S. Ambassador, Retired Chairman, The Weather Channel Companies
• Trish Silber (NEEF Vice Chair) President, Aliniad Consulting Partners, Inc.
• Diane Wood (NEEF Secretary) President, National Environmental Education Foundation
• Carlos Alcazar, Founder and Chairman, Culture ONE World
• Megan Reilly Cayten, Co-Founder and Chief Executive Officer, Catrinka, LLC
• Philippe Cousteau, Co-Founder and CEO, EarthEcho International
• David M. Kiser, Vice President, Environment, Health, Safety and Sustainability, International Paper
• Wonya Lucas, President, Lucas Strategic Consulting
• Shannon Schuyler, Principal, Corporate Responsibility Leader, PricewaterhouseCoopers (PwC)
• Jacqueline M. Thomas, Vice President of Corporate Responsibility, Toyota Motor Sales USA Inc.

Background: Section 10(a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community-based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: February 3, 2015.

Gina McCarthy,

Administrator.

George Basile, Ph.D.

Dr. Basile is currently a Professor in the School of Sustainability at Arizona State University (ASU), a Senior Sustainability Scientist in ASU's Global Institute of Sustainability and Affiliate Professor in the School of Public Affairs. He is also the Swedish Knowledge Foundation's Distinguished International Guest Professor of Sustainability-Driven Innovation. Dr. Basile's work has reframed sustainability as a ''decision space'' and focuses on how to plan, lead and act strategically for emerging sustainability opportunities and challenges. Dr. Basile has been the Executive Director of the ASU Decision Theater, a unique systems exploration and application center. He has also served as a faculty affiliate and advisor to the Sustainability Consortium, a group of over 80 global businesses, universities and NGOs developing science-based standards for sustainable products. At ASU, Dr. Basile's activities include developing novel insights, strategic methods and tools that create solutions for sustainability including novel educational programs in sustainability and leadership in both the United States and the European Union and at both the undergraduate and graduate levels.

Dr. Basile holds a B.S. in Physics from University of California, Irvine and a Ph.D. in Biophysics from University of California, Berkeley. His publications include a three-volume edited set *The Business of Sustainability* (Praeger Press, 2011).

[FR Doc. 2015–02572 Filed 2–6–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0800, 3060–0508, 3060–1058 and 3060–xxxx]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 11, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0508.

Title: Parts 1 and 22 Reporting and Recordkeeping Requirements.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households, and State, Local or Tribal Governments.

Number of Respondents and Responses: 15,713 respondents; 15,713 responses.

Estimated Time per Response: 15 minutes–10 hours.

Frequency of Response: Recordkeeping requirement; On occasion, quarterly, and semi-annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 222, 303, 309 and 332.

Total Annual Burden: 4,894 hours.

Annual Cost Burden: $19,445,250.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. The information collected is used to determine on a case-by-case basis, whether or not to grant licenses authorizing construction and operation of wireless telecommunications facilities to common carriers. Further, this information is used to develop statistics about the demand for various wireless licenses and/or the licensing process itself, and occasionally for rule enforcement purposes.

This revised information collection reflects changes in rules applicable to Part 22 800 MHz Cellular Radiotelephone (''Cellular'') Service licensees and applicants, as adopted by the Commission in a Report and Order (''R&O'') on November 7, 2014 (WT Docket No. 12–40; RM No. 11510; FCC 14–181). By the R&O, the Commission eliminates or streamlines certain Cellular Service filing requirements, thereby reducing the information collection burdens for Cellular Service respondents.

OMB Control No.: 3060–0800.

Title: FCC Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau.

Form No.: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 2,447 respondents; 2,447 responses.

Estimated Time per Response: 0.5–1.75 hours.

Frequency of Response: Recordkeeping requirement; occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 4(i), 154(i), 303(r) and 309(j).

Total Annual Burden: 2,759 hours.

Total Annual Cost: $366,975.

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Privacy Act Impact Assessment: Yes.

Needs and Uses: FCC Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the wireless services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless and/or public safety licenses that have previously been consented to by the Commission or for which notification but not prior consent is required. This form is used by applicants/licensees in the Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Broadband Radio Services, Educational Radio Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft).

The purpose of this form is to obtain information sufficient to identify the parties to the proposed assignment or transfer, establish the parties' basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical

Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation.

This revised information collection reflects changes in rules applicable to Part 22 800 MHz Cellular Radiotelephone (''Cellular'') Service licensees and applicants, as adopted by the Commission in a Report and Order (''R&O'') on November 7, 2014 (WT Docket No. 12–40; RM No. 11510; FCC 14–181). In addition to other rule revisions that do not affect this information collection, the Commission adopted a revised rule Section 22.948(a) to require the electronic submission of maps (in GIS format and PDF) when the Cellular applicant submits Form 603 to apply for Partitioning and Disaggregation. This requirement very slightly increases the total annual burden hours for this information collection. FCC Form 603 itself is not being revised.

OMB Control No.: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement: Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau.

Form No.: FCC Form 608.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 991 respondents; 991 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 158, 161, 301, 303(r), 308, 309, 310, 332 and 503.

Total Annual Burden: 996 hours.

Annual Cost Burden: $1,282,075.

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 608 is a multipurpose form. It is used to provide notification or request approval for any spectrum leasing arrangement (''Lease'') entered into between an existing licensee in certain wireless services and a spectrum lessee. This form also is required to notify or request approval for any spectrum subleasing arrangement (''Sublease''). The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease. The form is also used to provide notification for any Private Commons Arrangement entered into between a licensee, lessee, or sublessee and a class of third-party users (as defined in Section 1.9080 of the Commission's Rules).

This revised information collection reflects changes in rules applicable to Part 22 800 MHz Cellular Radiotelephone (''Cellular'') Service licensees and applicants, as adopted by the Commission in a Report and Order (''R&O'') on November 7, 2014 (WT Docket No. 12–40; RM No. 11510; FCC 14–181). In addition to other rule revisions that do not affect this information collection, the Commission adopted a revised rule Section 22.948(d) to require the electronic submission of maps (in GIS format and PDF) when the Cellular Service applicant submits Form 608.

The requirement very slightly increases the total annual burden hours for this information collection. FCC Form 608 itself is not being revised.

OMB Control No.: 3060–xxxx.

Title: Certification of TV Broadcast Licensee Technical Information in Advance of Incentive Auction.

Form No.: Form 2100, Schedule 381, Pre-Auction Technical Certification Form.

Type of Review: New information collection.

Respondents: Business or other for profit entities; not for profit institutions.

Number of Respondents and Responses: 2,170 respondents and 2,170 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Public Law 112–96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Total Annual Burden: 2,170 hours.

Annual Cost Burden: $542,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Some assurances of confidentiality are being provided to the respondents. Parties filing Form 2100, Schedule 381 may seek confidential treatment of information they provide pursuant to the Commission's existing confidentiality rules (See 47 CFR 0.459).

Needs and Uses: The information gathered in this collection will be used to support the Federal Communications Commission's efforts to hold an incentive auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) (Pub. L. 112–96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012)). In the Incentive Auction Order, the Commission directed the Media Bureau to develop a form to be submitted prior to the incentive auction by each full power and Class A broadcast licensee to certify that it has reviewed the technical data on file with the Commission related to its current license authorization and confirm that the technical data is correct with respect to actual operations FCC Form 2100, Schedule 381, Pre-Auction Technical Certification Form. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, GN Docket 12–268, Report and Order, 29 FCC Rcd 6567, 6820 (2014) (''Incentive Auction Order''). This data collection will also collect from licensees basic data regarding equipment currently in use at each licensed facility to facilitate the channel reassignment process following the completion of the incentive auction. Licensees will submit FCC Form 2100, Schedule 381 one time, at a deadline to be announced by the Media Bureau in advance of the incentive auction.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2015–02533 Filed 2–6–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0346]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission)

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 10, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Frequency of Response: Annual reporting requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Number of Respondents and Responses: 16 respondents; 16 responses.

Estimated Time per Response: 10 mins. (0.166 hrs.).

Total Annual Burden: 3 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 78.27(b)(1) requires the licensee of a Cable Television Relay Service (CARS) station to notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited. 47 CFR 78.27(b)(2) requires CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30-day advance filing requirement may be granted where unanticipated delays occur.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2015–02532 Filed 2–6–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0120]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 10, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0120.

Type of Review: Extension of a currently approved collection.

Title: Broadcast EEO Program Model Report, FCC Form 396–A.

Form Number: FCC Form 396–A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 5,000 respondents; 5,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Equal Employment Opportunity (EEO) Model Program Report, FCC Form 396–A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment

of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

Federal Communications Commission.

Sheryl D. Todd,

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

[FR Doc. 2015–02525 Filed 2–6–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) proposes to add a new system of records, FCC/CGB–4, ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD) Program.'' The FCC's Consumer and Governmental Affairs Bureau (CGB) will use the information contained in the ITRS–URD Program's system of records to cover the personally identifiable information (PII) that is collected, used, stored, and maintained as part of the management, operations, and functions of the ITRS–URD's Program's database(s). The ITRS–URD Program, which is administered under contract with the FCC, is a database registration system that provides a necessary interface for multiple services, which include, but are not limited to Internet-based Telecommunications Relay Services (ITRS) such as VRS,[1] IP Relay,[2] and IPCTS,[3] for individuals who are deaf, deaf-blind, hard of hearing, and/or have speech disabilities, and who are eligible under the Americans with Disabilities Act (ADA) and who have registered to subscribe to/participate in the ITRS–URD Program's services. These various forms of Telecommunications Relay Services (TRS) allow persons who are deaf, deaf-blind, hard of hearing, and/or have a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

DATES: Submit written comments concerning this new system of records on or before March 11, 2015. The Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before March 23, 2015. The proposed new system of records will become effective on March 23, 2015 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Information Technology (IT), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Information Technology (IT), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be obtained or viewed pursuant to the contact and location information given above in the **ADDRESSES** section. The purpose for establishing this new system of records, FCC/CGB–4, ''ITRS–URD,'' is to cover the PII of individuals in the ITRS–URD Program's database(s) who are eligible to register to subscribe to/participate in the ITRS–URD Program's services. The ITRS–URD Program, which is administered under contract with the FCC, is a database registration system that provides a necessary interface for multiple services, including, but not limited to ITRS, individuals who are deaf, deaf-blind, hard of hearing, and/or have speech disabilities and who are eligible under the ADA. These various Telecommunications Relay Services allow people with hearing or speech disabilities (or who are deaf-blind) to place and receive calls.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/CGB–4

SYSTEM NAME:

Internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD) Program.

SECURITY CLASSIFICATION:

The FCC's CIO team will provide a security classification to this system based on NIST FIPS–199 standards.

SYSTEM LOCATION(S):

TRS Program Administrator; and TRS Fund Program Coordinator, Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals for which the ITRS–URD Program's services are provided include individuals who are deaf, deaf-blind, hard of hearing, and/or have speech disabilities, and who are eligible under the ADA, to register to participate in/subscribe to one or more of the ITRS–URD Program's multiple services; are registered and currently receiving ITRS–URD Program's services; and/or are minors whose status makes them eligible for a parent or guardian to register them to participate in/subscribe to the ITRS–URD Program's services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the ITRS–URD Program's services include, but are not limited to: the individual's full name (first, middle, and last names), parent or guardian's name of the registered subscriber who is a minor, full residential address, date of birth, last four digits of social security number (SSN) (or alternative proof of identification for those who do not have a social security number), ten digit telephone number(s) assigned in the TRS number directory and associated uniform resource identifier (URI) information, user's registered location information for emergency calling purposes, eligibility certification (digital copy) for ITRS–URD Program's service(s) and date obtained from provider, VRS provider and ITRS–URD Program's initiation date and

[1] Video Relay Service (VRS).

[2] Internet Protocol Relay Service (IP Relay).

[3] Internet Protocol Captioned Telephone Service (IPCTS).

termination date, ITRS–URD Program support received per month, date of the provision of ITRS–URD Program support (if applicable), ITRS–URD Program user password, and date on which user last placed a point-to-point or relay call, call detail records registry for all forms of ITRS–URD Program's services, including CDRs [4] supporting requests for reimbursement of VRS, IPCTS, and IP Relay service, monitoring and reporting information on data abnormalities, errors, and potential sources of fraud.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 141–154, 225, 255, 303(r), 616, and 620; 47 CFR parts 64, Subpart F, *Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities (VRS Reform Order).*

PURPOSE(S):

The ITRS–URD Program, which is administered under contract with the FCC, is a database registration system that provides a necessary interface for multiple services, which include, but are not limited to VRS, IP Relay, and IPCTS, for individuals who are deaf, deaf-blind, hard of hearing, and/or have speech disabilities, and who are eligible under the ADA to register to participate in/subscribe to one or more of the ITRS–URD Program's multiple services; are registered and currently receiving ITRS–URD Program services; and/or are minors whose status makes them eligible for a parent or guardian to register them to participate in/subscribe to the ITRS–URD Program's services. The ITRS–URD Program system of records will cover the PII that is collected, used, stored, and maintained in this ITRS–URD Program's database(s), which is operated by the ITRS–URD Program's administrator on behalf of the FCC. This PII includes:

1. The information that is used to determine whether an individual who is applying for the ITRS–URD Program's services is eligible to register to participate in/subscribe to the ITRS–URD Program's services.

2. The information that the ITRS–URD Program's administrator uses to determine whether information with respect to its registered users already in the ITRS–URD Program's database(s) is correct and complete. These ITRS–URD Program's VRS providers must furnish the ITRS–URD Program's administrator with a subscriber list containing PII that includes the individual's full name (first, middle, and last names), parent or guardian's name of the registered subscriber who is a minor, full residential address, date of birth, last four digits of social security number (or alternative proof of identification for those who do not have a social security number), ten digit telephone number(s) assigned in the TRS number directory and associated URI information, user's registered location information for emergency calling purposes, eligibility certification (digital copy) for ITRS–URD Program's service(s) and date obtained from provider, VRS provider and ITRS–URD Program's initiation date and termination date, ITRS–URD Program support received per month, date of the provision of ITRS–URD Program support (if applicable), ITRS–URD Program user password, and date on which user last placed a point-to-point or relay call, call detail records registry for all forms of ITRS–URD Program's services, including CDRs supporting requests for reimbursement of VRS, IPCTS, and IP Relay service, monitoring and reporting information on data abnormalities, errors, and potential sources of fraud subscriber;

3. The information that the ITRS–URD Program's administrator will use to implement a system for automated validation of the registration information that has been submitted and ensure that the authorized VRS providers are unable to register individuals who do not pass the identification verification check conducted through the ITRS–URD Program. The ITRS–URD Program's Third Party contractor and subcontractors will establish the verification protocol to ensure that each individual has proven his/her eligibility to use the service with their desired default VRS provider;

4. The information VRS providers must request to validate each individual who seeks to register that he/she is an actual person living or visiting in the United States;

5. The information for a user signed up with multiple providers for different VRS services. Each company acting as the default provider will have access to their users' information as it pertains only to their service; and

6. The information that is contained in the records of the inquiries that the ITRS–URD Program's VRS providers will make available to the ITRS–URD Program's administrator's Third Party contractor and subcontractors who manages the database [verification/call/service center(s)] to verify that individuals who are deaf, deaf-blind, hard of hearing, and/or have speech disabilities and who are eligible under the ADA to participate in the ITRS–URD Program's services.

Records in the ITRS–URD Program's system of records are available for public inspection after redaction of information that could identify the individual ITRS–URD Program's participant/subscriber, such as the individual's name(s), date of birth, last four digits of social security number (including alternative proof of identification or other unique ID for those individuals who do not have a social security number), tribal ID number, telephone number(s), emergency location, and/or other PII that validates their participation in this program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions. The FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected in each of these cases.

1. FCC Program Management—A record from this system may be accessed and used by the FCC and the ITRS–URD Program Administrator and Program contractor's employees (including employees of subcontractors) to conduct official duties associated with the management and operation of the ITRS–URD Program, as directed by the Commission. The FCC may routinely have access to the information in the ITRS–URD Program's database(s), which includes, but is not limited to audits, oversight, and/or investigations of the ITRS–URD Program's database(s) for the purposes of managing and/or eliminating waste, fraud, and abuse in the ITRS services and ITRS–URD Program. The information may be shared with the FCC's Enforcement Bureau (EB), Consumer and Governmental Affairs Bureau (CGB), Office of Managing Director (OMD), Office of Inspector General (OIG), Telecommunications Relay Services (TRS) Fund Administrator and Program contractor(s) (and subcontractors), and the FCC TRS Fund Program Administrator, as necessary;

2. Third Party Contractors—A record from this system may be disclosed to an employee of a third-party contractor (and subcontractors, as required) to conduct the verification process that allows the ITRS–URD Program's administrator to determine the accuracy of the PII provided by the ITRS–URD Program's registrants to the system of records, *i.e.,* when an employee of a third-party contractor (and/or subcontractor), responsible for

[4] Call data records (CDR).

management registration and fraud prevention, verifies the eligibility of the participant/registrant/subscriber;

3. State Agencies and Authorized Entities— A record from this system may be disclosed to designated state agencies and other authorized entities, which include, but are not limited to state public utility commissions, and their agents, as is consistent with applicable Federal and State laws, to administer the ITRS–URD Program in that state and to perform other management and oversight duties and responsibilities. When necessary, this may include the transfer of data to and/or from the Third Party Contractor (and subcontractors) to determine or verify the accuracy of the PII provided by the ITRS–URD Program's registrants;

4. FCC Enforcement Actions—When a record in this system involves an informal complaint filed with the FCC alleging a violation of FCC Rules and Regulations by an ITRS–URD Program's applicant/subscriber/registrant, licensee, certified or regulated entity or an unlicensed person or entity, the complaint may be served to the alleged violator for a response through the FCC's normal course of complaint handling process. When an order or other Commission-issued document that includes consideration of an informal complaint or complaints is issued by the FCC for resolution or to enforce FCC Rules and Regulations, the complainant's name may be made public in that order or letter document. Where a complainant in filing his or her complaint explicitly requests that confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint;

5. Congressional Investigations and Inquiries—A record from this system may be disclosed to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, for the purposes of an official Congressional investigation, including but not limited to information concerning ITRS and the ITRS–URD Program's services, ITRS–URD Program's Administrator (and Third Party Contractors and subcontractors) and ITRS–URD Program participants/subscribers/registrants, and/or in response to an inquiry made by an individual to the Congressional office for the individual's own records;

6. Government-wide Program Management and Oversight—When requested by the National Archives and Records Administration (NARA), the Office of Personnel Management (OPM), the General Services Administration (GSA), and/or the Government Accountability Office (GAO) for the purpose of records management studies conducted under authority of 44 U.S.C. 2904 and 2906 (such disclosure(s) shall not be used to make a determination about individuals); when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

7. ADA Eligibility Verification Data—A record from this system may be disclosed to the appropriate Federal and/or State authorities (including transfers of PII data to/from the ITRS Program's Administrators, contractors, and subcontractors, as required) for the purposes of verifying whether individuals who are deaf, deaf-blind, hard of hearing and/or have speech disabilities are eligible under the ADA to register to participate in/subscribe to the ITRS–URD Program;

8. Law Enforcement and Investigation—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate federal, state, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another (federal or state) agency to investigate program participation by VRS providers;

9. Adjudication and Litigation—Where by careful review, the Agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records, these records may be used by a court or adjudicative body in a proceeding 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 Agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

10. Department of Justice—A record from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation; and

11. Breach of Federal Data—A record from this system may be disclosed to appropriate agencies, entities (including the ITRS–URD Program's administrator and its employees), and persons when: (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission 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 the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information pertaining to the ITRS–URD Program includes electronic records, files, and data and paper documents, records, and files. The ITRS–URD Program administrator will host the electronic data, which will reside in the administrator's ITRS–URD Program's database(s) and in the Third Party Contractor and subcontractors who conduct the subscribers/participants' verification processes. No data will be transmitted, downloaded, or allowed to reside outside of the database(s), except as required by:

1. ITRS providers to populate and update subscriber information and to query to verify the subscriber's status;

2. The FCC to perform oversight, performance, investigations, and/or audit functions, and

3. The ITRS–URD Program administrator or the TRS Fund Administrator to retrieve records and to obtain/transfer data from the Third

Party Contractor and subcontractor, when required for the verification process.

Any paper documents will be stored in filing cabinets in the secured areas in the ITRS–URD Program's administrator's office and at the FCC for oversight, performance, investigations, and/or audit purposes.

RETRIEVABILITY:

Information in the ITRS–URD Program may be retrieved by various identifiers, including, but not limited to the individual's name, last four digits of the social security number (SSN), date of birth, phone number, and residential address and other identifiers listed in the **CATEGORIES OF RECORDS IN THE SYSTEM.**

SAFEGUARDS:

1. Access to the electronic files is restricted to:

a. Authorized and credentialed the ITRS–URD Program's administrator's employees;

b. TRS Fund Administrator (and the TRS Third Party Contractor(s) and subcontractor(s)); and

c. Authorized FCC employees and contractors including, but not limited to the FCC TRS Fund Program Administrator, Enforcement Bureau (EB), Office of Inspector General (OIG), Consumer and Governmental Affairs Bureau (CGB), and Office of Managing Director (OMD), Information Technology (IT), and other bureaus and offices (B/Os), as required, to perform oversight, performance, auditing, and related management functions, duties, and responsibilities.

The FCC requires that parties with authorized access to the ITRS–URD Program's databases, including but not limited to the ITRS Administrator, employees, Third Party contractors and subcontractors, must maintain compliance with the FCC's computer and information security requirements, including those in the Federal Information Security Management Act (FISMA). In addition, an Independent Verification and Validation (IV&V) shall be performed to certify that functional and security requirements were met. IV&V will be conducted by a third-party vendor to ensure reliability, accessibility, validity, compatibility, traceability, security, and ease of use of the application within the environment.

2. The paper documents are maintained in file cabinets that are located in the ITRS–URD Program's administrator's office suites (and the Third Party contractor and subcontractor, as required), and at the FCC for oversight, performance, investigations, and/or audit purposes. The file cabinets are locked when not in use and at the end of the business day.

Access to these files is restricted to:

a. Authorized ITRS–URD Program's administrator's employees (and contractors and subcontractors); and

b. The TRS Fund Administrator and authorized FCC employees and contractors including, but not limited to the FCC TRS Fund Program Administrator, Enforcement Bureau (EB), Office of Inspector General (OIG), Consumer and Governmental Affairs Bureau (CGB), and Office of Managing Director (OMD), Information Technology Center (ITC), and other bureaus and offices (B/Os), as required, to perform oversight, performance, auditing, and related management functions, duties, and responsibilities.

RETENTION AND DISPOSAL:

The National Archives and Records Administration (NARA) has not established a records schedule for the information in the ITRS–URD Program. Consequently, until NARA has approved a records schedule, the ITRS–URD Program's administrator will maintain the information in the ITRS–URD Program's databases in accordance with the requirements of the ITRS *Order.* The ITRS *Order* states that:

1. The data in the ITRS–URD Program's database(s) (including the information maintained by the Third Party Contractor and subcontractors who perform the verification processes) are the property of the Federal Government, but will be treated as propriety information of the contractor as the default provider; and

2. A log of all actions (queries and modifications) shall be maintained for a period of no less than five years (or for such other period as directed by the Commission. *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 03–123 & 10–51, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) (ITRS Order).

Disposal of obsolete or out-of-date paper documents and files is by shredding. Electronic data, files, and records are destroyed by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

TRS Fund Administrator;

TRS Fund Program Coordinator, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554; and

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

TRS Fund Administrator;

TRS Fund Program Coordinator, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554;

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554; or

Privacy Analyst, Information Technology (IT), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

TRS Fund Administrator;

TRS Fund Program Coordinator, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554;

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554; or

Privacy Analyst, Information Technology (IT), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

TRS Fund Administrator;

TRS Fund Program Coordinator, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554;

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554; or

Privacy Analyst, Information Technology (IT), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in the ITRS–URD Program's database(s) include, but are not limited to:

1. The information that the ITRS Program providers must furnish prior to registering ITRS subscribers/participants, and/or to re-certifying ITRS subscribers for participation in the ITRS Program; and

2. The information that individuals who are deaf, deaf-blind, hard of hearing and have speech disabilities and who are eligible under the ADA must provide to determine their eligibility for participation in the ITRS–URD Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–02530 Filed 2–6–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for information collection requirements pertaining to the Commission's administrative activities. That clearance expires on February 28, 2015.

DATES: Comments must be filed by March 11, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Administrative Activities: FTC File No. P911409'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nicholas Mastrocinque (Nick M) and Ami Dziekan (Ami D), Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9232, 600 Pennsylvania Avenue NW., Washington, DC 20580, Nick M: (202) 326–3188 and Ami D: (202) 326–2648.

SUPPLEMENTARY INFORMATION:

Title: Administrative Activities.

OMB Control Number: 3084–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The currently approved information collection consists of: (a) Applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); (b) the FTC's consumer complaint systems; and (c) the FTC's program evaluation activities.

On November 14, 2014, the Commission sought comment on the information collection requirements pertaining to the Commission's administrative activities. 79 FR 68245. No comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Estimated Annual Hours Burden: 222,851 hours (150 + 222,622 + 64 + 15).

(a) Applications to the Commission, including applications and notices supported pursuant to the Commission's Rules of Practice: 150 hours.

Most applications to the Commission generally fall within the ''law enforcement'' exception to the PRA and are mostly found in Part III (Rules of Practice for Adjudicative Proceedings) of the Commission's Rules of Practice. *See* 16 CFR 3.1–3.83. Nonetheless, there are various applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice). For example, staff estimates that the FTC annually receives approximately 15 requests for clearance submitted by former FTC employees in order to participate in certain matters and screening affidavits submitted by partners or legal or business associates of former employees pursuant to Rule 4.1, 16 CFR 4.1. There are also procedures set out in Rule 4.11(e) for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, and requests for material pursuant to compulsory process in cases or matters to which the agency is not a party. Rule 4.11(e) requires that a person who seeks such testimony or material submit a statement in support of the request. Staff estimates that agency personnel receive approximately 10 requests per year. Other types of applications and notices are either infrequent or difficult to quantify. Nonetheless, in order to cover any potential ''collection of information'' for which separate clearance has not been sought, staff conservatively projects the FTC will receive 75 applications or notices per year. Staff estimates each respondent will incur, on average, approximately 2 hours of burden to submit an application or notice, resulting in a cumulative annual total of 150 burden hours (75 applications or notices × 2 burden hours).

Annual Cost Burden

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on an estimated average of $115/hour for executives' and attorneys' wages, would be approximately $17,250 (150 hours × $115).[1] There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

(b) Complaint Systems: 222,622 annual hours.

Consumer Response Center (CRC)

Consumers can submit complaints about fraud and other practices to the FTC's Consumer Response Center by telephone or through an online complaint form at the FTC's Web site. Telephone complaints and inquiries to the FTC are answered both by FTC staff and contractors. These telephone counselors ask for the same information that consumers would enter on the applicable forms available on the FTC's Web site. The FTC also hosts a second online complaint form called econsumer.gov. This form accepts cross-border complaints from consumers through the econsumer.gov Web site and transmits them into the Consumer Sentinel Network. For telephone inquiries and complaints, the FTC staff estimates that it takes 5.9 minutes per call to gather information, and an estimated 5.3 minutes for consumers to enter a complaint online. The burden estimate conservatively assumes that the entire phone call is devoted to collecting information from consumers, although frequently telephone counselors devote a portion of the call to providing requested information to consumers.

As of 2014, the FTC now supports web chat for its online complaint process. Web chat allows consumers to communicate in real time using an easily accessible web interface to obtain technical support for the online complaint process. This feature will

[1] Figures based on national median salaries, including bonuses and benefits, divided by a 2,080 hour work year (52 weeks × 40 hours/week), for a ''Managing Attorney,'' ''Attorney II,'' ''Attorney III,'' ''Attorney IV,'' and ''Attorney V'' at *www.salary.com.*

enable the FTC to retain consumer complaints from consumers who might otherwise abandon the process. Staff estimates that it will take an average of 5 minutes per chat session to obtain the necessary technical support.

Complaints Concerning the National Do Not Call Registry

To receive complaints from consumers of possible violations of the rules governing the National Do Not Call Registry, 16 CFR 310.4(b), the FTC maintains both an online form and a toll free hotline with automated voice response system. Consumer complainants must provide the phone number that was called, whether the call was prerecorded, and the date and time of the call. They may also provide either the name or telephone number of the company about which they are complaining, their name and address so they can be contacted for additional information, as well as for a brief comment regarding their complaint. In addition, complainants have the option of answering three yes-or-no questions to help law enforcement investigating complaints. The FTC staff estimates that the time required of consumer complainants to the National Do Not Call Registry is 3 minutes for phone complaints and 2 minutes for online complaints.

Identity Theft

To handle complaints about identity theft, the FTC must obtain more detailed information than is required of other complainants. Identity theft complaints generally require more information (such as a description of actions complainants have taken with credit bureaus, companies, and law enforcement, and the identification of multiple suspects) than general consumer complaints and fraud complaints. FTC staff estimates that the online identity theft complaint form takes consumers up to 8.5 minutes to complete.

For consumers who call the CRC with an identity theft complaint, staff estimates that it will take 6.4 minutes per call to obtain complaint information. A substantial portion of identity theft-related calls typically consists of counseling consumers on other steps they should consider taking to obtain relief. The time needed for counseling is excluded from the estimate.

Surveys

Consumer customer satisfaction surveys give the agency information about the overall effectiveness and timeliness of the FTC call center and online complaint process. An entity called Customer Feedback Insights contacts subsets of consumers throughout the year with several preapproved questions to elicit information from consumers about the overall effectiveness of the phone complaint process. Current estimates are that each respondent will require 4.4 minutes to answer the questions during the phone survey and about 2.7 minutes for the online survey (approximately 20–30 seconds per question).

In addition, the FTC currently uses ForeSee, Inc. for online customer satisfaction surveys on *www.ftc complaintassistant.gov.* It randomly selects consumers to take part in a brief survey to provide feedback about the Web site. Estimates relating to ForeSee surveys are included under ''Misc. and fraud-related consumer complaints (Web chat)'' in the table below.

The FTC also plans to send an electronic survey to all United States-located Consumer Sentinel Network users to identify areas where the system is satisfactory and where it can improve. Staff estimates the survey to not take more than 5 minutes to complete.

What follows are staff's estimates of burden for these various collections of information, including the surveys. The figures for the online forms and consumer hotlines are an average of annualized volume for the respective programs including both current and projected volumes over the three-year clearance period sought and the number of respondents for each activity has been rounded to the nearest thousand.

Activity	Number of respondents	Number of minutes/activity	Total hours
Misc. and fraud-related consumer complaints (phone)	367,000	5.9	36,088
Misc. and fraud-related consumer complaints (online)	221,000	5.3	19,522
Misc. and fraud-related consumer complaints (Web chat)[2]	31,200	5.0	2,600
Do-Not-Call related consumer complaints (phone)	627,000	3.0	31,350
Do-Not-Call related consumer complaints (online)	2,860,000	2.0	95,333
Identity theft complaints (phone)	224,000	6.4	23,893
Identity theft complaints (online)	88,000	8.5	12,467
Customer Satisfaction Questionnaire (phone)	8,000	4.4	587
Customer Satisfaction Questionnaire (online)	17,000	2.7	765
Consumer Sentinel Network Survey	200	5.0	17
Totals	4,443,400	.....	222,622

Annual Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

(c) Program Evaluations: 79 hours.

Review of Divestiture Orders—64 hours.

The Commission issues, on average, approximately 10–15 orders in merger cases per year that require divestitures. As a result of a 1999 study authorized by the Office of Management and Budget (OMB) and conducted by the staffs of the Bureau of Competition (BC) and the Bureau of Economics, as well as more recent experience, BC monitors these required divestitures by interviewing representatives of the Commission-approved buyers of the divested assets within the first year after the divestiture is completed.

BC staff interviews representatives of the buyers to ask whether all assets required to be divested were, in fact, divested; whether the buyer has used the divested assets to enter the market of concern to the Commission and, if so, the extent to which the buyer is participating in the market; whether the

[2] This category includes online customer satisfaction surveys by ForeSee, Inc., for *www.ftc complaintassistant.gov.*

divestiture met the buyer's expectations; and whether the buyer believes the divestiture has been successful. In a few cases, BC staff may also interview monitor trustees, if appropriate. In all these interviews, staff seeks to learn about pricing and other basic facts regarding competition in the markets of concern to the FTC.

Participation by the buyers is voluntary. Each responding company designates the company representative most likely to have the necessary information; typically, a company executive and an attorney represent the company. Each interview takes less than one hour to complete. BC staff further estimates that it takes each participant no more than one hour to prepare for the interview. Staff conservatively estimates that, for each interview of the responding company, two individuals (a company executive and an attorney) will devote two hours (one hour preparing and one hour participating) each to responding to questions for a total of four hours. Interviews of monitor trustees typically involve only the monitor trustee and take approximately one hour to complete with no more than one hour to prepare for the interview. Assuming that staff evaluates approximately 15 divestitures per year during the three-year clearance period, the total hours burden for the responding companies will be approximately 60 hours per year (15 divestiture reviews × 4 hours for preparing and participating). Staff may include approximately 2 monitor trustee interviews a year, which would add at most 4 hours (2 interviews × 2 hours for preparing and participating.).

Annual Cost Burden

Using the burden hours estimated above, staff estimates that the total annual labor cost, based on a conservative estimated average of $135/hour for executives' and attorneys' wages, would be approximately $8,640 (64 hours × $135).[3] There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Review of Advocacy Program—15 hours.

The FTC's advocacy program draws on the Commission's expertise in competition and consumer protection matters to encourage state and federal legislators, agencies and regulatory officials, courts and private entities to consider the effects of their decisions on competition and consumer welfare. The Commission and staff send approximately 20 letters to such decision makers annually regarding the likely effects of various bills, regulations, and other policies.

In the past, the Office of Policy Planning (''OPP'') has evaluated the effectiveness of these advocacy comments by surveying comment recipients and other relevant decision makers. OPP intends to continue this evaluation by sending an electronic, or where necessary, a paper questionnaire to relevant parties within a year after sending an advocacy.

Most survey questions ask the respondent to agree or disagree with a statement concerning the advocacy comment that they received. Specifically, these questions ask about the consideration, content, influence, and public effect of our comments. The questionnaire also provides respondents with an opportunity to provide additional remarks regarding the comments they received, advocacy comments in general, and the outcome of the matter. These survey results are also included in the FTC's internal performance management indicators, and are used to guide the FTC's selection and prioritization of future advocacy opportunities.

OPP staff estimates that, on average, respondents will take 30 minutes or less to complete the questionnaire. OPP staff estimates that 15 minutes of administrative time will be necessary to prepare a survey for return via mail or email. Accordingly, staff estimates that each respondent will incur 45 minutes of burden, resulting in a cumulative total of 15 burden hours per year (45 minutes of burden per respondent × 20 respondents per year). OPP staff does not intend to conduct any follow-up activities that would involve the respondents' participation.

Annual Cost Burden

OPP staff estimates a conservative hourly labor cost of $100 for the time of the survey participants (primarily state representatives and senators) and an hourly labor cost of $20 for administrative support time. Thus, staff estimates a total labor cost of $55 for each response (30 minutes of burden at $100 per hour plus 15 minutes of burden at $20 per hour). Assuming 20 respondents will complete the questionnaire on an annual basis, staff estimates the total annual labor costs will be approximately $1,100 ($55 per response × 20 respondents). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 11, 2015. Write ''Administrative Activities: FTC File No. P911409'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/adminactivitiespra2,* by following the instructions on the web-based form. If

[3] See supra note 1 (attorney salary source data for ''Managing Attorney'').

this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Administrative Activities: FTC File No. P911409'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 11, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–02435 Filed 2–6–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010; Docket 2015–0055; Sequence 1]

Federal Acquisition Regulation; Information Collection; Progress Payments (SF–1443)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously information collection requirement concerning progress payments.

DATES: Submit comments on or before April 10, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0010, Progress Payments, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0010, Progress Payments'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0010, Progress Payments''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0010, Progress Payments'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Ms. Flowers/IC 9000–0010, Progress Payments.

Instructions: Please submit comments only and cite Information Collection 9000–0010, Progress Payments, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Kathy Hopkins, Procurement Analyst, Federal Acquisition Policy Division, at (202) 969–7226 or *Kathlyn.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. Pursuant to FAR clause 52.232–16 ''Progress Payments,'' contractors are required to request progress payments on Standard Form 1443, ''Contractor's Request for Progress Payment,'' or an agency approved electronic equivalent. Additionally, contractors may be required to submit reports, certificates, financial statements, and other pertinent information, reasonably requested by the Contracting Officer. The contractual requirement for submission of reports, certificates, financial statements and other pertinent information is necessary for protection of the Government against financial loss through the making of progress payments.

B. Annual Reporting Burden

Respondents: 25,161.

Responses per Respondent: 32.

Annual Responses: 805,152.

Hours per Response: .42.

Total Burden Hours: 338,164.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

D. Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: February 3, 2015.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–02546 Filed 2–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final Toxicological Profiles Toxaphene and Trichlorobenzenes prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Grant, Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, Mailstop F–57, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone number (800) 232–4636 or (770)488–3351. Electronic access to these documents is available at the ATSDR Web site: *www.atsdr.cdc.gov/toxprofiles/index.asp.*

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances (also called the Substance Priority List). This list identifies 275 hazardous substances that ATSDR (in cooperation with EPA) has determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on May 28, 2014 (79 FR 30613) and is available at *www.atsdr.cdc.gov/spl.* In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List, in an effort to ''. . . establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

Notice of the availability of these toxicological profiles in draft form for public review and comment was published in the **Federal Register** on November 22, 2010 (75 FR 71132), with notice of a 90-day public comment period, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and, where appropriate, changes were incorporated into the profile. This material is available for public inspection at ATSDR.

Availability

This notice announces the availability of the Toxicological Profiles for Toxaphene and Trichlorobenzenes prepared by ATSDR. The Toxicological Profiles for these substances will be made available to the public on or about October 17, 2015 at the ATSDR Web site: *www.atsdr.cdc.gov/toxprofiles/index.asp.*

These final profiles are also available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847 for a fee as determined by NTIS.

Dated: February 3, 2015.

Sascha Chaney,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2015–02544 Filed 2–6–15; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2017.

For information, contact Virginia Cain, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, 3311 Toledo Road, Room 7204, Mailstop P08, Hyattsville, Maryland 20782, telephone 301/458–4395 or fax 301/458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–02451 Filed 2–6–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns ''Comprehensive High-Impact HIV Prevention Projects for Community-Based Organizations'', Funding Opportunity Announcement (FOA) PS15–1502, initial review.

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 9:00 a.m.–4:00 p.m., EST, Panels 1–5; March 3, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Comprehensive High-Impact HIV Prevention Projects for Community-Based Organizations'' FOA PS15–1502. The panel is reconvening to review 44 additional applications that have been deemed eligible for FOA PS15–1502.

Contact Person for More Information: Elizabeth Wolfe, Public Health Advisor, CDC, 1600 Clifton Road, NE., Mailstop E07,

Atlanta, Georgia 30333, Telephone: (404) 639–8135.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–02450 Filed 2–6–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance (45 CFR part 400).

OMB No.: 0970–0036.

Description: As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, social services, and targeted assistance programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

Respondents: State Refugee Resettlement and Wilson-Fish Agencies, local, and Tribal governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6	50	3	3.88	582

Estimated Total Annual Burden Hours: 582.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–02510 Filed 2–6–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0126]

Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection of Ebola Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of three Emergency Use Authorizations (EUAs) (the Authorizations), one of which was amended after initial issuance, for three in vitro diagnostic devices for detection of the Ebola virus in response to the 2014 Ebola virus outbreak in West Africa. FDA is issuing these Authorizations under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by BioFire Defense, LLC (BioFire Defense) and altona Diagnostics GmbH (altona). The Authorizations contain, among other things, conditions on the emergency use of the authorized in vitro diagnostic devices. The Authorizations follow the September 22, 2006, determination by then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security. On the basis of such determination, the Secretary of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Ebola virus subject to the terms of any authorization issued under the FD&C Act. The Authorizations, which include an explanation of the reasons for issuance, are reprinted in this document.

DATES: The Authorizations for the BioFire FilmArray NGDS BT–E Assay and BioFire FilmArray Biothreat-E test are effective as of October 25, 2014. The Authorization for the altona RealStar® Ebolavirus RT–PCR Kit 1.0, which was amended and reissued on November 26, 2014, is effective as of November 10, 2014.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION**

section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Luciana Borio, Assistant Commissioner for Counterterrorism Policy, Office of Counterterrorism and Emerging Threats, and Acting Deputy Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of DHS that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of the Department of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of DHS under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the CDC (to the extent feasible and appropriate given the applicable circumstances), FDA [1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Requests for In Vitro Diagnostic Devices for Detection of the Ebola Virus

On September 22, 2006, then-Secretary of DHS, Michael Chertoff, determined that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security.[2] On August 5, 2014, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on August 12, 2014 (79 FR 47141). On October 22, 2014, BioFire Defense submitted complete EUA requests for both the BioFire FilmArray NGDS BT–E Assay and for the BioFire FilmArray Biothreat-E test, and on October 25, 2014, FDA issued, an EUA for the BioFire FilmArray NGDS BT–E Assay and an EUA for the BioFire FilmArray Biothreat-E test, subject to the terms of these authorizations. On October 29, 2014, altona submitted a complete EUA request for the RealStar® Ebolavirus RT–PCR Kit 1.0, and on November 10, 2014, FDA issued, an EUA for the RealStar® Ebolavirus RT–PCR Kit 1.0, subject to the terms of this authorization. On November 26, 2014, in response to a request from altona on November 18, 2014, FDA amended and reissued in its entirety the EUA to allow, in addition to altona, distributors that are authorized by altona to distribute the

[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

[2] Under to section 564(b)(1) of the FD&C Act, the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the Secretary of DHS of a material threat under to section 319F–2 of the PHS Act sufficient to affect national security or the health and security of U.S. citizens living abroad (section 564(b)(1)(D) of the FD&C Act).

RealStar® Ebolavirus RT–PCR Kit 1.0 with certain conditions applicable to such authorized distributor(s), and to allow the use of the assay under the EUA at certain non-U.S. laboratories, with certain conditions. The EUA, as amended and reissued on November 26, 2014, which includes an explanation for its reissuance, is reprinted in this document. Because the November 26, 2014, Authorization for altona's Ebola assay replaces in its entirety the EUA issued on November 10, 2014, the original Authorization issued on November 10, 2014, is not reprinted in this document.

III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the Internet at *http://www.regulations.gov.*

IV. The Authorizations

Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of certain in vitro diagnostic devices. The Authorization for the BioFire FilmArray NGDS BT–E Assay issued on October 25, 2014, in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act:

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring MD 20993

October 25, 2014

Cynthia Phillips, Ph.D.
Director, Regulated Products
BioFire Defense, LLC
79 W 4500 S, Suite 14
Salt Lake City, UT 84107

Dear Dr. Phillips:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the FilmArray NGDS BT-E Assay for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) on the FilmArray Instrument in individuals with signs and symptoms of Ebola virus infection or who are at risk for exposure or may have been exposed to the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in conjunction with epidemiological risk factors, by laboratories designated by the United States Department of Defense (DoD), pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[2]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the FilmArray NGDS BT-E Assay (as described in the Scope of Authorization section of this letter (Section II)) in individuals with signs and symptoms of Ebola virus infection or who are at risk for exposure or may have been exposed to the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in conjunction with epidemiological risk factors (as described in the Scope of Authorization section of this letter (Section II)) for the presumptive detection of Ebola Zaire

[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).
[2] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus*. 79 Fed. Reg. 47141 (August 12, 2014).

virus (detected in the West Africa outbreak in 2014) by laboratories designated by DoD, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the FilmArray NGDS BT-E Assay for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola Zaire virus (detected in the West Africa outbreak in 2014) can cause Ebola virus disease, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the FilmArray NGDS BT-E Assay, when used with the FilmArray Instrument, may be effective in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection, and that the known and potential benefits of the FilmArray NGDS BT-E Assay, when used with the FilmArray Instrument for diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the FilmArray NGDS BT-E Assay for diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection.[3]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized FilmArray NGDS BT-E Assay by laboratories designated by DoD for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in individuals with signs and symptoms of Ebola virus infection or who are at risk for exposure or may have been exposed to the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in conjunction with epidemiological risk factors.

The Authorized FilmArray NGDS BT-E Assay:

The FilmArray NGDS BT-E Assay is a real-time reverse transcriptase Polymerase Chain Reaction (rRT-PCR) for the *in vitro* qualitative detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in whole blood specimens from individuals with signs and symptoms of Ebola virus infection or who are at risk for exposure or may have been exposed to the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in conjunction with epidemiological risk factors. The test procedure consists of nucleic acid extraction followed by rRT-PCR on only the FilmArray Instrument.

[3] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The FilmArray NGDS BT-E Assay consists of the instrument and a self-contained, disposable reagent pouch that includes two internal control assays. It is an automated test system that utilizes a single-use consumable cartridge containing all amplification and detection reagents ("lab-in-a-pouch" system) that performs nucleic acid purification, reverse transcription, nested multiplex PCR amplification, and high resolution melting to analyze samples for the presence of Ebola Zaire virus. Once a whole blood specimen is collected, it takes about 5 minutes to begin the automated test, which produces results in approximately 1 hour.

During a FilmArray run, two stages of PCR are performed. The first stage (PCR1) is a multiplexed, one-step reverse transcriptase (RT) PCR. The PCR1 mixture is diluted and added to the second stage PCR (PCR2) reaction. PCR2 performs specific reactions in triplicate; each reaction contains primer sets that are specific for one of the organisms or controls in the panel. The PCR2 reactions also contain LCGreen Plus™, a double-stranded DNA binding dye whose fluorescence is used to generate real time PCR curves and crossing points (Cp), and melting curves and melting temperatures (Tm). While both the Cp and Tm parameters could be utilized to determine assay results, only the Tms are used to provide qualitative detection results in an automatically generated report.

The above described FilmArray NGDS BT-E Assay, when labeled consistently with the labeling authorized by FDA entitled "FilmArray™ NGDS BT-E Assay Instructions for Use" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by BioFire Defense in consultation with FDA, is authorized to be distributed to and used by laboratories designated by DoD under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described FilmArray NGDS BT-E Assay is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care professionals and patients:

- **Fact Sheet for Health Care Providers: Interpreting FilmArray NGDS BT-E Assay Results for Ebola**
- **Fact Sheet for Patients: Understanding Results from the FilmArray NGDS BT-E Test for Ebola**

As described in Section IV below, BioFire Defense is also authorized to make available additional information relating to the emergency use of the authorized FilmArray NGDS BT-E Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized FilmArray NGDS BT-E Assay in the specified population, when used for presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized FilmArray NGDS BT-E Assay may be effective in the diagnosis of Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection pursuant to section 564(c)(2)(A) of the Act. The FDA has reviewed

the scientific information available to FDA including the information supporting the conclusions described in Section I above, and concludes that the authorized FilmArray NGDS BT-E Assay, when used to diagnose Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection in the specified population, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized FilmArray NGDS BT-E Assay under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the FilmArray NGDS BT-E Assay described above is authorized to diagnose Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection in individuals with signs and symptoms of Ebola virus infection or who are at risk for exposure or may have been exposed to the Ebola Zaire virus (detected in the West Africa outbreak in 2014) in conjunction with epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the FilmArray NGDS BT-E Assay during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the FilmArray NGDS BT-E Assay.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

BioFire Defense

A. BioFire Defense will distribute the authorized FilmArray NGDS BT-E Assay with the authorized labeling, as may be revised by BioFire Defense in consultation with FDA, only to laboratories designated by DoD.
B. BioFire Defense will provide to laboratories designated by DoD the authorized FilmArray NGDS BT-E Assay Fact Sheet for Health Care Providers and the authorized FilmArray NGDS BT-E Assay Fact Sheet for Patients.

C. BioFire Defense will make available on its website the authorized FilmArray NGDS BT-E Assay Fact Sheet for Health Care Providers and the authorized FilmArray NGDS BT-E Assay Fact Sheet for Patients.

D. BioFire Defense will inform laboratories designated by DoD and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. BioFire Defense will ensure that laboratories designated by DoD using the authorized FilmArray NGDS BT-E Assay have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

F. BioFire Defense will track adverse events and report to FDA under 21 CFR Part 803.

G. Through a process of inventory control, BioFire Defense will maintain records of device usage.

H. BioFire Defense will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which BioFire Defense becomes aware.

I. BioFire Defense is authorized to make available additional information relating to the emergency use of the authorized FilmArray NGDS BT-E Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

J. BioFire Defense may request changes to the authorized FilmArray NGDS BT-E Assay Fact Sheet for Health Care Providers or the authorized FilmArray NGDS BT-E Assay Fact Sheet for Patients. Such requests will be made by BioFire Defense in consultation with FDA.

Laboratories Designated by DoD

K. Laboratories designated by DoD will include with reports of the results of the FilmArray NGDS BT-E Assay the authorized Fact Sheet for Health Care Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

L. Laboratories designated by DoD will perform the FilmArray NGDS BT-E Assay on only the FilmArray Instrument.

M. Laboratories designated by DoD will have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

N. Laboratories designated by DoD will collect information on the performance of the assay, and report to BioFire Defense any suspected occurrence of false positive or false negative results of which they become aware.

O. All laboratory personnel using the assay should be appropriately trained in the NGDS BT-E Assay on the FilmArray platform and use appropriate laboratory and personal protective equipment when handling this kit.

BioFire Defense and Laboratories Designated by DoD

P. BioFire Defense and laboratories designated by DoD will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

Q. All advertising and promotional descriptive printed matter relating to the use of the authorized FilmArray NGDS BT-E Assay shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

R. All advertising and promotional descriptive printed matter relating to the use of the authorized FilmArray NGDS BT-E Assay shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an Emergency Use Authorization for use by laboratories designated by DoD;
- This test has been authorized only for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola Zaire virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized FilmArray NGDS BT-E Assay may represent or suggest that this test is safe or effective for the diagnosis of Ebola Zaire virus (detected in the West Africa outbreak in 2014).

The emergency use of the authorized FilmArray NGDS BT-E Assay as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

Page 7 – Dr. Phillips, BioFire Defense, LLC

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

The Authorization for the BioFire FilmArray Biothreat-E test issued October 25, 2014, in its entirety (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring MD 20993

October 25, 2014

Cynthia Phillips, Ph.D.
Director, Regulated Products
BioFire Defense, LLC
79 W 4500 S, Suite 14
Salt Lake City, UT 84107

Dear Dr. Phillips:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the FilmArray Biothreat-E test for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) on the FilmArray Instrument in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors, by laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, to perform moderate complexity tests and by laboratories certified under CLIA to perform high complexity tests,[1] pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[3]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the FilmArray Biothreat-E test (as described in the Scope of Authorization section of this letter (Section II)) in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors (as described in the Scope of Authorization section of this letter (Section II)) for the presumptive detection of Ebola Zaire virus (detected in the West Africa

[1] For ease of reference, this letter will refer to these two types of laboratories together as "CLIA Moderate and High Complexity Laboratories."
[2] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).
[3] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus*. 79 Fed. Reg. 47141 (August 12, 2014).

outbreak in 2014) by CLIA Moderate and High Complexity Laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the FilmArray Biothreat-E test for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola Zaire virus (detected in the West Africa outbreak in 2014) can cause Ebola virus disease, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the FilmArray Biothreat-E test, when used with the FilmArray Instrument, may be effective in diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection, and that the known and potential benefits of the FilmArray Biothreat-E test, when used with the FilmArray Instrument for diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the FilmArray Biothreat-E test for diagnosing Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection.[4]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized FilmArray Biothreat-E test by CLIA Moderate and High Complexity Laboratories for the presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors.

The Authorized FilmArray Biothreat-E test:

The FilmArray Biothreat-E test is an automated reverse transcriptase Polymerase Chain Reaction (RT-PCR) system for the *in vitro* qualitative detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) in whole blood specimens from individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors. The FilmArray Biothreat-E test can also be used with urine specimens when tested in conjunction with a patient-matched whole blood specimen. The test procedure consists of nucleic acid purification followed by reverse transcription, two-stage nested PCR, and high resolution melting to analyze samples for the presence of Ebola Zaire virus on only the FilmArray Instrument.

[4] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The FilmArray Biothreat-E test consists of the instrument and a self-contained, disposable reagent pouch that includes an internal control assay. The PCR2 reactions also contain LCGreen Plus™, a double-stranded DNA binding dye whose fluorescence is used to generate real time PCR curves, crossing points (Cp), melting curves, and melting temperatures. The melting temperatures (Tm) are used to provide qualitative detection results in an automatically generated report.

Once a clinical specimen is collected, it takes about 5 minutes to begin the automated test, which produces results in approximately 1 hour.

The FilmArray Biothreat-E test includes the following assay control:

- **RNA Process Control** is a positive control carried through all stages of the test process to demonstrate that all steps carried out in the FilmArray BT pouch were successful. The positive control assay targets an RNA transcript from the yeast *Schizosaccharomyces pombe*.

The above described FilmArray Biothreat-E test, when labeled consistently with the labeling authorized by FDA entitled "FilmArray™ Biothreat-E Instructions for Use" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by BioFire Defense in consultation with FDA, is authorized to be distributed to and used by CLIA Moderate and High Complexity Laboratories under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described FilmArray Biothreat-E test is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care professionals and patients:

- **Fact Sheet for Health Care Providers: Interpreting FilmArray Biothreat-E Test Results for Ebola**

- **Fact Sheet for Patients: Understanding Results from the FilmArray Biothreat-E Test for Ebola**

As described in Section IV below, BioFire Defense is also authorized to make available additional information relating to the emergency use of the authorized FilmArray Biothreat-E test that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized FilmArray Biothreat-E test in the specified population, when used for presumptive detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014), outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized FilmArray Biothreat-E test may be effective in the diagnosis of Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection pursuant to section 564(c)(2)(A) of the Act. The FDA has reviewed the scientific information available to FDA including the information supporting the

conclusions described in Section I above, and concludes that the authorized FilmArray Biothreat-E test, when used to diagnose Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection in the specified population, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized FilmArray Biothreat-E test under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the FilmArray Biothreat-E test described above is authorized to diagnose Ebola Zaire virus (detected in the West Africa outbreak in 2014) infection in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the FilmArray Biothreat-E test during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the FilmArray Biothreat-E test.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

BioFire Defense

A. BioFire Defense will distribute the authorized FilmArray Biothreat-E test with the authorized labeling, as may be revised by BioFire Defense in consultation with FDA, only to CLIA Moderate and High Complexity laboratories.

B. BioFire Defense will provide to CLIA Moderate and High Complexity Laboratories the authorized FilmArray Biothreat-E test Fact Sheet for Health Care Providers and the authorized FilmArray Biothreat-E test Fact Sheet for Patients.

C. BioFire Defense will make available on its website the FilmArray Biothreat-E test Fact Sheet for Health Care Providers and the authorized FilmArray Biothreat-E test Fact Sheet for Patients.

D. BioFire Defense will inform CLIA Moderate and High Complexity Laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. BioFire Defense will ensure that CLIA Moderate and High Complexity Laboratories using the authorized FilmArray Biothreat-E test have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

F. BioFire Defense will track adverse events and report to FDA under 21 CFR Part 803.

G. Through a process of inventory control, BioFire Defense will maintain records of device usage.

H. BioFire Defense will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which BioFire Defense becomes aware.

I. BioFire Defense is authorized to make available additional information relating to the emergency use of the authorized FilmArray Biothreat-E test that is consistent with, and does not exceed, the terms of this letter of authorization.

J. BioFire Defense may request changes to the authorized FilmArray Biothreat-E test Fact Sheet for Health Care Providers or the authorized FilmArray Biothreat-E test Fact Sheet for Patients. Such requests will be made by BioFire Defense in consultation with FDA.

CLIA Moderate and High Complexity Laboratories

K. CLIA Moderate and High Complexity Laboratories will include with reports of the results of the FilmArray Biothreat-E test the authorized Fact Sheet for Health Care Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

L. CLIA Moderate and High Complexity Laboratories will perform the FilmArray Biothreat-E test on only the FilmArray Instrument.

M. CLIA Moderate and High Complexity Laboratories will have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

N. CLIA Moderate and High Complexity Laboratories will collect information on the performance of the assay, and report to BioFire Defense any suspected occurrence of false positive or false negative results of which they become aware.

O. All laboratory personnel using the assay should be appropriately trained in FilmArray Biothreat-E test on the FilmArray platform and use appropriate laboratory and personal protective equipment when handling this kit.

BioFire Defense and CLIA Moderate and High Complexity Laboratories

P. BioFire Defense and CLIA Moderate and High Complexity Laboratories will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

Q. All advertising and promotional descriptive printed matter relating to the use of the authorized FilmArray Biothreat-E test shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

R. All advertising and promotional descriptive printed matter relating to the use of the authorized FilmArray Biothreat-E test shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an Emergency Use Authorization for use by CLIA Moderate and High Complexity Laboratories;
- This test has been authorized only for the detection of Ebola Zaire virus (detected in the West Africa outbreak in 2014) and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola Zaire virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized FilmArray Biothreat-E test may represent or suggest that this test is safe or effective for the diagnosis of Ebola Zaire virus (detected in the West Africa outbreak in 2014).

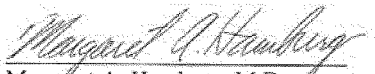
The emergency use of the authorized FilmArray Biothreat-E test described in this letter of authorization must comply with the conditions and all other terms of this authorization.

Page 7 – Dr. Phillips, BioFire Defense, LLC

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,



Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

The Authorization for the RealStar® Ebolavirus RT–PCR Kit 1.0, originally issued on November 10, 2014, as amended and reissued in its entirety on November 26, 2014, (not including the authorized versions of the fact sheets and other written materials) follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act, and its amendment:

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

November 26, 2014

Dr. Sven Cramer
Director, Regulatory Affairs
altona Diagnostics GmbH
Mörkenstraße 12
22767 Hamburg
Germany

Dear Dr. Cramer:

On November 10, 2014, based on a request by altona Diagnostics GmbH, the Food and Drug Administration (FDA) issued a letter authorizing the emergency use of the RealStar® Ebolavirus RT-PCR Kit 1.0 for the presumptive detection of RNA from Ebolaviruses[1] on specified instruments in EDTA plasma from individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors, by laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. §263a, to perform high complexity tests,[2] pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3). On November 18, 2014, FDA received a request from altona Diagnostics GmbH for an amendment to the Emergency Use Authorization (EUA). In response to that request, and having concluded that revising the November 10, 2014, EUA is appropriate to protect the public health or safety under section 564(g)(2)(C) of the Act (21 U.S.C. § 360bbb-3(g)(2)(C)), the November 10, 2014, letter authorizing the emergency use of the RealStar® Ebolavirus RT-PCR Kit 1.0 is being reissued in its entirety with the amendments incorporated.[3]

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[4] Pursuant to section 564(b)(1) of the Act

[1] This authorization is being issued in response to the epidemic in West Africa involving Zaire ebolavirus. This assay is intended for the qualitative detection of RNA from Ebolaviruses (such as Zaire ebolavirus [including the Zaire ebolavirus strain detected in the West Africa outbreak 2014], Sudan ebolavirus, Tai Forest ebolavirus, Bundibugyo ebolavirus, and Reston ebolavirus); however, it does not distinguish between the different Ebola virus species or strains.

[2] For ease of reference, this letter will refer to this type of laboratory as "CLIA High Complexity Laboratories."

[3] The amendments to the November 10, 2014, letter allow, in addition to altona Diagnostics GmbH, distributors that are authorized by altona Diagnostics GmbH to distribute the RealStar® Ebolavirus RT-PCR Kit 1.0 with certain conditions applicable to such authorized distributor(s). Because this assay may be distributed outside the U.S., the amendments also allow the use of this assay under this EUA, with certain conditions, at non-U.S. laboratories that are similarly qualified as CLIA High Complexity Laboratories. The Instructions for Use and Fact Sheet for Health Care Providers have also been updated to incorporate these amendments.

[4] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS

(21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[5]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the RealStar® Ebolavirus RT-PCR Kit 1.0 (as described in the Scope of Authorization section of this letter (Section II)) in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors (as described in the Scope of Authorization section of this letter (Section II)) for the presumptive detection of RNA from Ebolaviruses by CLIA High Complexity Laboratories, or similarly qualified non-U.S. laboratories, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the RealStar® Ebolavirus RT-PCR Kit 1.0 for the presumptive detection of RNA from Ebolaviruses in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. Ebolaviruses can cause Ebola virus disease, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the RealStar® Ebolavirus RT-PCR Kit 1.0, when used with the specified instruments, may be effective in diagnosing Ebolavirus infection, and that the known and potential benefits of the RealStar® Ebolavirus RT-PCR Kit 1.0, when used with the specified instruments for diagnosing Ebolavirus infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the RealStar® Ebolavirus RT-PCR Kit 1.0 for diagnosing Ebolavirus infection.[6]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 by CLIA High Complexity Laboratories, or similarly qualified non-U.S. laboratories, for the presumptive detection of RNA from Ebolaviruses in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors.

Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).

[5] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus.* 79 Fed. Reg. 47141 (August 12, 2014).

[6] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

The Authorized RealStar® Ebolavirus RT-PCR Kit 1.0:

The RealStar® Ebolavirus RT-PCR Kit 1.0 is a reverse transcriptase Polymerase Chain Reaction (RT-PCR) system for the *in vitro* qualitative detection of RNA from Ebolaviruses in human EDTA plasma specimens from individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors. RNA is extracted from whole blood collected with EDTA as the anticoagulant using only the QIAamp Viral RNA Mini Kit. The test procedure consists of three processes in a single tube assay: reverse transcription of target RNA and Internal Control RNA to cDNA, PCR amplification of target and Internal Control cDNA, and simultaneous detection of PCR amplicons by fluorescent dye labelled probes to analyze samples for the presence of RNA from Ebola viruses on only the ABI Prism® 7500 SDS instrument, the ABI Prism® 7500 Fast SDS instrument, the LightCycler® 480 Instrument II, and the CFX96™ system/Dx real-time system.

The assay is designed to detect all Ebolavirus species. The reagent system includes a heterologous amplification system (Internal Control) to identify possible RT-PCR inhibition and to confirm the integrity of the reagents of the kit.

The RealStar® Ebolavirus RT-PCR Kit 1.0 includes the following assay control:

> The **Internal Control** contains a defined copy number of an "artificial" RNA molecule with no homologies to any other known sequences. It has to be added to the nucleic acid extraction procedure and is reverse transcribed, amplified and detected in parallel to the Ebolavirus specific RNA. The function of the Internal Control is to ensure the integrity of Ebolavirus specific real-time RT-PCR results by indicating potential RT-PCR inhibition.
>
> The **PCR grade water** is to be used as negative control for the RT-PCR reaction. Its function is to indicate contamination of RT-PCR reagents.
>
> The "**Positive Control Target EBOLA**" consists of an *in vitro* transcript which contains the target sequence used by the RealStar® Ebolavirus RT-PCR Kit 1.0 for the detection of Ebolavirus specific RNA. The "Positive Control Target EBOLA" is used as positive control for the RT-PCR and verifies the functionality of the Ebolavirus RNA specific RT-PCR detection system, which is included in the RealStar® Ebolavirus RT-PCR Kit 1.0.

The above described RealStar® Ebolavirus RT-PCR Kit 1.0, when labeled consistently with the labeling authorized by FDA entitled "RealStar® Ebolavirus RT-PCR Kit 1.0 Instructions for Use" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm#ebola), which may be revised only by altona Diagnostics GmbH in consultation with FDA, is authorized to be distributed to and used by CLIA High Complexity Laboratories, or similarly qualified non-U.S. laboratories, under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described RealStar® Ebolavirus RT-PCR Kit 1.0 is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care professionals and patients:

- **Fact Sheet for Health Care Providers: Interpreting RealStar® Ebolavirus RT-PCR Kit 1.0 Results**
- **Fact Sheet for Patients: Understanding Results from the RealStar® Ebolavirus RT-PCR Kit 1.0**

As described in Section IV below, altona Diagnostics GmbH and its authorized distributor(s) are also authorized to make available additional information relating to the emergency use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 test in the specified population, when used for presumptive detection of RNA from Ebolaviruses outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 may be effective in the diagnosis of infection with Ebolaviruses pursuant to section 564(c)(2)(A) of the Act. The FDA has reviewed the scientific information available to FDA including the information supporting the conclusions described in Section I above, and concludes that the authorized RealStar® Ebolavirus RT-PCR Kit 1.0, when used to diagnose infection with Ebolaviruses in the specified population, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the RealStar® Ebolavirus RT-PCR Kit 1.0 described above is authorized to diagnose infection with Ebolaviruses in individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the RealStar® Ebolavirus RT-PCR Kit 1.0 during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the RealStar® Ebolavirus RT-PCR Kit 1.0.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

altona Diagnostics GmbH and Its Authorized Distributor(s)

A. altona Diagnostics GmbH and its authorized distributor(s) will distribute the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 with the authorized labeling, as may be revised only by altona Diagnostics GmbH in consultation with FDA, only to CLIA High Complexity Laboratories or similarly qualified non-U.S. laboratories.

B. altona Diagnostics GmbH and its authorized distributor(s) will provide to CLIA High Complexity Laboratories or similarly qualified non-U.S. laboratories the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 Fact Sheet for Health Care Providers and the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 Fact Sheet for Patients.

C. altona Diagnostics GmbH and its authorized distributor(s) will make available on their websites the RealStar® Ebolavirus RT-PCR Kit 1.0 test Fact Sheet for Health Care Providers and the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 Fact Sheet for Patients.

D. altona Diagnostics GmbH and its authorized distributor(s) will inform CLIA High Complexity Laboratories or similarly qualified non-U.S. laboratories and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. altona Diagnostics GmbH and its authorized distributor(s) will ensure that CLIA High Complexity Laboratories or similarly qualified non-U.S. laboratories using the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

F. Through a process of inventory control, altona Diagnostics GmbH and its authorized distributor(s) will maintain records of device usage.

G. altona Diagnostics GmbH and its authorized distributor(s) will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which altona Diagnostics GmbH and its authorized distributor(s) become aware.

H. altona Diagnostics GmbH and its authorized distributor(s) are authorized to make available additional information relating to the emergency use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 that is consistent with, and does not exceed, the terms of this letter of authorization.

altona Diagnostics GmbH

I. altona Diagnostics GmbH will provide its authorized distributor(s) with a copy of this EUA, and communicate to its authorized distributor(s) any subsequent amendments that might be made to this EUA and its authorized accompanying materials (e.g., fact sheets, instructions for use).

J. altona Diagnostics GmbH only may request changes to the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 Fact Sheet for Health Care Providers or the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 Fact Sheet for Patients. Such requests will be made only by altona Diagnostics GmbH in consultation with FDA.

K. altona Diagnostics GmbH will track adverse events and report to FDA under 21 CFR Part 803.

CLIA High Complexity Laboratories and Similarly Qualified Non-U.S. Laboratories

L. CLIA High Complexity Laboratories and similarly qualified non-U.S. laboratories will include with reports of the results of the RealStar® Ebolavirus RT-PCR Kit 1.0 the authorized Fact Sheet for Health Care Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

M. CLIA High Complexity Laboratories and similarly qualified non-U.S. laboratories will perform the RealStar® Ebolavirus RT-PCR Kit 1.0 on only the ABI Prism® 7500 SDS instrument, the ABI Prism® 7500 Fast SDS instrument, the LightCycler® 480 Instrument II, and the CFX96™ system/Dx real-time system.

N. CLIA High Complexity Laboratories and similarly qualified non-U.S. laboratories will have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

O. CLIA High Complexity Laboratories and similarly qualified non-U.S. laboratories will collect information on the performance of the assay, and report to altona Diagnostics GmbH and its authorized distributor(s) any suspected occurrence of false positive or false negative results of which they become aware.

P. All laboratory personnel using the assay should be appropriately trained in RealStar® Ebolavirus RT-PCR Kit 1.0 on the specified instruments and use appropriate laboratory and personal protective equipment when handling this kit.

altona Diagnostics GmbH, Its Authorized Distributor(s), CLIA High Complexity Laboratories, and Similarly Qualified Non-U.S. Laboratories

Q. altona Diagnostics GmbH, its authorized distributor(s), CLIA High Complexity Laboratories, and similarly qualified non-U.S. laboratories will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

R. All advertising and promotional descriptive printed matter relating to the use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

S. All advertising and promotional descriptive printed matter relating to the use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an Emergency Use Authorization for use by CLIA High Complexity Laboratories and similarly qualified non-U.S. laboratories;
- This test has been authorized only for the detection of RNA from Ebolaviruses (such as Zaire ebolavirus, [including the Zaire ebolavirus strain detected in the West Africa outbreak 2014], Sudan ebolavirus, Tai Forest ebolavirus, Bundibugyo ebolavirus, and Reston ebolavirus) and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola Zaire virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 may represent or suggest that this test is safe or effective for the diagnosis of infection with Ebolavirus.

The emergency use of the authorized RealStar® Ebolavirus RT-PCR Kit 1.0 described in this letter of authorization must comply with the conditions and all other terms of this authorization.

Page 8 – Dr. Sven Cramer, altona Diagnostics GmbH

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: February 2, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–02467 Filed 2–6–15; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0354]

Guidance for Industry: Questions and Answers Regarding the Effect of Section 4205 of the Patient Protection and Affordable Care Act of 2010 on State and Local Menu and Vending Machine Labeling Laws; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the withdrawal of a guidance entitled ''Guidance for Industry: Questions and Answers Regarding the Effect of Section 4205 of the Patient Protection and Affordable Care Act of 2010 on State and Local Menu and Vending Machine Labeling Laws,'' dated August 2010. We are taking this action because the policies stated in the guidance have been superseded by our issuance of final rules on menu and vending machine labeling.

DATES: February 9, 2015.

FOR FURTHER INFORMATION CONTACT: Felicia B. Billingslea, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 25, 2010 (75 FR 52427), we announced the availability of a guidance entitled ''Guidance for Industry: Questions and Answers Regarding the Effect of Section 4205 of the Patient Protection and Affordable Care Act of 2010 on State and Local Menu and Vending Machine Labeling Laws.'' The guidance stated that we were issuing the guidance to: (1) Ensure that industry and State and local governments understand the immediate effects of the law, and (2) clarify the effect of section 4205 of the Patient Protection and Affordable Care Act of 2010 on State and local menu and vending machine labeling laws.

We are withdrawing this guidance because we recently issued two final rules entitled ''Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments'' and ''Food Labeling; Calorie Labeling of Articles of Food in Vending Machines'' (see 79 FR 71156 (December 1, 2014) and 79 FR 71259 (December 1, 2014), respectively). The preambles for these final rules discuss issues relating to Federalism and to federal preemption of State and local laws and reflect our latest thinking on those issues. Consequently, the guidance no longer reflects our current thinking insofar as the law's effect on State and local menu and vending machine labeling laws is concerned.

Dated: February 3, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–02526 Filed 2–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0798]

Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices; Mobile Medical Applications: Guidances for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidance documents. FDA is issuing ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' to inform manufacturers, distributors, and other entities that the Agency does not intend to enforce compliance with regulatory requirements for Medical Device Data Systems (MDDS) and two similar radiology device types due to the low risk they pose to patients and the importance they play in advancing digital health. FDA is also issuing an updated version of the guidance document ''Mobile Medical Applications,'' originally issued on September 25, 2013, that has been edited to be consistent with the MDDS guidance document.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for

download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' or the updated version of ''Mobile Medical Applications'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Alternatively, you may submit written requests for single copies of the guidances to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidances to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments on ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' with the docket number found in brackets in the heading of this document. Identify comments on ''Mobile Medical Applications'' with the docket number FDA–2011–D–0530.

FOR FURTHER INFORMATION CONTACT: *For devices regulated by CDRH:* Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–5528. *For devices regulated by CBER:* Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA recognizes that the progression to digital health offers potential for better, more efficient patient care and improved health outcomes. To achieve this goal requires that many medical devices be interoperable with various types of health information technology, including other types of medical devices. The foundation for such intercommunication is hardware and software that functions to transfer, store, convert formats, or display medical device data without modifying the data or controlling the functions or parameters of any connected medical device.[1] In the **Federal Register** of February 15, 2011 (76 FR 8637), FDA issued a final rule defining MDDS devices, medical image storage devices, and medical image communications devices, reclassifying them from class III (high risk) to class I (low risk). Class I devices are subject to general controls under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

Since issuance of the February 2011 final rule, FDA has gained additional experience with these types of technologies and has determined that these devices pose a low risk to the public. Therefore, in the documents that are the subject of this notice, FDA provides guidance on the compliance policy for MDDS devices, medical image storage devices, and medical image communication devices and makes conforming changes to the guidance document ''Mobile Medical Applications.'' FDA issued a notice of availability of the draft guidances on June 25, 2014 (79 FR 36072).

The guidance document, ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices,'' states that FDA does not intend to enforce compliance with the regulatory requirements that apply to MDDS devices, medical image storage devices, and medical image communications devices. Blood Establishment Computer Software (BECS) and accessories to BECS are not MDDS devices. Therefore, this guidance does not address the regulation of those devices, which FDA intends to address in another forum. If you have questions about BECS or BECS accessories, please contact the Office of Communication Outreach and Development, CBER at 800–835–4709, 240–402–7800, or email *ocod@fda.hhs.gov.*

The September 25, 2013, version of the guidance entitled ''Mobile Medical Applications'' has been updated to be consistent with the policy stated in the guidance document ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices.'' The updated version of ''Mobile Medical Applications'' also incorporates additional examples from FDA's mobile medical applications' Web site (see *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ConnectedHealth/MobileMedicalApplications/ucm255978.htm*).

[1] MDDS are not intended to be used for active patient monitoring.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on medical device data systems, medical image storage devices, and medical image communications devices as well as mobile medical applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidances may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' or ''Mobile Medical Applications'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400001 to identify the guidance ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' or document number 1741 to identify the guidance ''Mobile Medical Applications.''

IV. Paperwork Reduction Act of 1995

The guidance documents ''Medical Device Data Systems, Medical Image Storage Devices, and Medical Image Communication Devices'' and ''Mobile Medical Applications'' refer to previously approved information collections found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Review Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 and 809 are approved under OMB control

number 0910–0485; the collections of information in 21 CFR part 803 are approved under OMB control numbers 0910–0437 and 0910–0291; the collections of information in 21 CFR part 806 are approved under OMB control number 0910–0359; the collections of information in 21 CFR part 807 subparts B and C are approved under OMB control number 0910–0625; the collections of information in 21 CFR part 807 subpart E are approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 subparts A through E are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073; and the collections of information regarding section 513(g) of the FD&C Act (21 U.S.C. 360c(g)) are approved under OMB control number 0910–0705.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: February 4, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–02573 Filed 2–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0500 (Formerly Docket No. 2004D–0042)]

Brief Summary and Adequate Directions for Use: Disclosing Risk Information in Consumer-Directed Print Advertisements and Promotional Labeling for Human Prescription Drugs; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled ''Brief Summary and Adequate Directions for Use: Disclosing Risk Information in Consumer-Directed Print Advertisements and Promotional Labeling for Human Prescription Drugs.'' This revised draft guidance, when finalized, will assist manufacturers, packers, and distributors (firms) of human prescription drugs and biologics with meeting the brief summary requirement for prescription drug advertising and the requirement that adequate directions for use be included with promotional labeling for prescription drugs when print materials are directed toward consumers. FDA is also announcing the withdrawal of the draft guidance for industry entitled ''Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements.''

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this revised draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the revised draft guidance by May 11, 2015. Submit either electronic or written comments on the proposed collection of information by April 10, 2015.

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance document.

Submit electronic comments on the revised draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *Regarding human prescription drugs:* Julie Chronis, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993–0002, 301–796–1200. *Regarding human prescription biological products:* Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Brief Summary and Adequate Directions for Use: Disclosing Risk Information in Consumer-Directed Print Advertisements and Promotional Labeling for Human Prescription Drugs.'' This revised draft guidance updates prior FDA policy and describes the Agency's current thinking regarding the brief summary requirement for consumer-directed print prescription drug advertisements. Specifically, the revised draft guidance includes recommendations for developing a consumer brief summary and notes that, so long as firms include appropriate information in a print advertisement as outlined in the revised draft guidance, FDA does not intend to object for a failure to include certain other information.

Additionally, this revised draft guidance provides new recommendations regarding the adequate directions for use requirement for consumer-directed print promotional labeling for prescription drug products. Although the requirement in 21 CFR 201.100(d) for firms to provide adequate information for use is generally fulfilled by providing the full FDA-approved package insert (PI), this revised draft guidance provides that, in exercising its enforcement discretion, FDA does not intend to object for failure to include the full PI with consumer-directed print promotional labeling pieces if firms include the appropriate information as outlined in the revised draft guidance, *i.e.,* the same information in the consumer brief summary. This recommendation is designed to standardize the information consumers receive in print prescription drug product advertisements and promotional labeling and to make information more understandable to consumers.

FDA issued a draft guidance in the **Federal Register** of February 10, 2004 (69 FR 6308), entitled ''Brief Summary:

Disclosing Risk Information in Consumer-Directed Print Advertisements.'' FDA requested comments on whether the draft guidance provided sufficient guidance on the content of the consumer brief summary and also requested research results on potential formats for the consumer brief summary. Comments, suggestions, and research were submitted to Docket No. 2004D–0042 and were carefully analyzed and considered before developing this revised draft guidance.

This revised draft guidance incorporates information from recent social science research, clarifies the risk information that should be included in the consumer brief summary, and recommends several formatting options for this information. The revised draft guidance also recommends the use of consumer-friendly language and visual techniques to improve accessibility for consumers. Additionally, this revised draft guidance recommends that firms not disseminate the full PI to fulfill the requirements in § 201.100(d) for consumer-directed print promotional labeling for prescription drugs. Rather, the revised draft guidance recommends that firms provide the same content and format created for the consumer brief summary. FDA is issuing this revised guidance as a draft to allow for public comment on the recommendations.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulations (21 CFR 10.115). The revised draft guidance, when finalized, will represent FDA's current thinking on the brief summary and adequate directions for use requirements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document. This revised draft guidance also refers to previously approved collection of information found in FDA regulations.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Brief Summary and Adequate Directions for Use: Disclosing Risk Information in Consumer-Directed Print Advertisements and Promotional Labeling for Human Prescription Drugs.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors (firms) of prescription human drug products, including biological products.

Burden Estimate: The revised draft guidance pertains to the brief summary requirement for prescription drug advertising and the requirement that adequate directions for use be included with promotional labeling for human prescription drugs when print materials are directed toward consumers.

The revised draft guidance, in part, explains FDA's current policy position that FDA does not intend to object for failure to include the entire PI to fulfill the requirements of § 201.100(d) for promotional labeling pieces directed toward consumers, if firms instead provide information on the most serious and the most common risks associated with the product, while omitting less important information. Specifically, FDA recommends that any Boxed Warning, all Contraindications, certain information regarding Warnings and Precautions (*i.e.,* the most clinically significant information from the Warnings and Precautions section of the PI, information that would affect a decision to prescribe or take a drug, monitoring or laboratory tests that may be needed, special precautions not set forth in other parts of the PI, and measures that can be taken to prevent or mitigate harm), and the most frequently occurring Adverse Reactions should be included.

Furthermore, FDA recommends that information should include the indication for the use being promoted. Information regarding patient directives (such as ''discuss with your health care provider any pre-existing conditions'' or ''tell your health care provider if you are taking any medications'') should also be included. Other types of information may be included if relevant to the drug or specific indication referred to in the promotional material(s). A statement should be included that more comprehensive information can be obtained from various sources, including the firm.

Thus, the revised draft guidance recommends that firms disclose certain information to others in place of the PI to fulfill the requirements in § 201.100(d). This ''third-party disclosure'' constitutes a ''collection of information'' under the PRA.

FDA estimates that approximately 400 firms disseminate 24,000 consumer-directed print promotional labeling pieces annually. FDA estimates that it will take firms approximately 10 hours to compile and draft the information needed to provide the information recommended in the revised draft guidance.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Adequate information for use: disclosing risk information in consumer-directed promotional labeling	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Hours per disclosure	Total hours
Disclosures Related to Adequate Information for Use (§ 201.100(d))	400	60	24,000	10	240,000

There are no capital costs or operating and maintenance costs associated with this collection of information.

This revised draft guidance also refers to previously approved collections of information found in FDA regulations with respect to the brief summary requirement. These collections of information are subject to review by OMB under the PRA. The collection of information in 21 CFR 202.1 has been approved under OMB control number 0910–0686.

III. Comments

In addition to general comments, FDA specifically requests comments on the following issues:

- In the revised draft guidance, FDA provides recommendations regarding the content and format of the consumer brief summary. Is this the most useful information for consumers to use in determining whether to take a medication or seek more information about a product, and if not, what information would be more useful?
- FDA is also interested in relevant research that has been conducted or alternative formats that were developed after we received comments on the 2004 draft guidance.
- In the revised draft guidance, FDA suggests that the adequate directions for use requirement be fulfilled by providing the consumer brief summary rather than the full PI for the product. FDA seeks comments regarding this recommendation.

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: February 3, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–02527 Filed 2–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Joint Meeting of the Pulmonary-Allergy Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Pulmonary-Allergy Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 19, 2015, from 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel telephone number is 301–948–8900.

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss supplemental new drug application 204275–S001, for fluticasone furoate and vilanterol inhalation powder (tradename Breo Ellipta) submitted by GlaxoSmithKline for the once daily maintenance treatment of asthma in patients 12 years of age and older. The discussion will include efficacy data, but the focus of the meeting will be safety, including the adequacy of the safety database to support approval, and whether a large safety trial to evaluate serious asthma outcomes is recommended.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 5, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 25, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 26, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on

public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 28, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–02554 Filed 2–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Inflammation.

Date: March 4, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Ave., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 3, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02438 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Career Development (K08) and Pathway to Independence (K99) Grant Applications.

Date: March 3–4, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical and Epidemiological Grant and Cooperative Agreement Applications.

Date: March 17–18, 2015.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Jeanette M Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: *February 3, 2015.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02439 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; DSR Member Conflict Application Review Panel.

Date: February 25, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 3, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02442 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34) and Clinical Trial Implementation Cooperative Agreement (U01).

Date: March 2, 2015.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: Quirijn Vos, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 5601 Fishers Lane, Rockville, MD 20892, MSC 9823, 240–669–5059, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Development of Sample Sparing Assays for Monitoring Immune Responses (U24).

Date: March 3–4, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Brookside A&B, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3F21A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892, (240) 669–5025, *maja.maric@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SEP for Clinical Investigator Award (K08).

Date: March 4, 2015.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3E72A, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 3, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02443 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–14–507 Limited Competition: Data Coordinating Center for Type 1 Diabetes TrialNet (UC4).

Date: February 27, 2015.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–305 Collaborative Interdisciplinary Team Science in Marrow Adipose Tissue.

Date: March 17, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Liver Disease Ancillary Studies.

Date: March 17, 2015.

Time: 12:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 741A, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–5404, *hoffertj@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrition Obesity Research Centers.

Date: March 18, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Novel Mechanisms Regulating the Adipocyte-Brain-Hepatocyte Axis.

Date: March 19, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 3, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02441 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Loan Repayment Program.

Date: April 30, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: JoAnn McConnell, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–5324. *mcconnej@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 3, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02444 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(a) 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 open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute on Aging Special Emphasis Panel; Training for the Future.

Date: April 6, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Jeannette L. Johnson, Ph.D., National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JohnsonJ9@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 3, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02437 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–066: Limited Competition: Specific Pathogen Free Macaque Colonies.

Date: February 26, 2015.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney, Nutrition, Obesity and Diabetes.

Date: February 27, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topic: Vision Small Business Review.

Date: March 3, 2015.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.

Date: March 6, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Biology Member Conflict.

Date: March 9, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: March 9–10, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact person: Zhang-Zhi Hu, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: March 10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 14–202: Environmental Contributors to Autism Spectrum Disorders (R21s).

Date: March 10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Biomechanical Aspects of Embryonic Development.

Date: March 10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 3, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–02440 Filed 2–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0973]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2015 minimum random drug testing rate at 25 percent of covered crewmembers.

DATES: The minimum random drug testing rate is effective January 1, 2015 through December 31, 2015.

Marine employers must submit their 2014 Management Information System (MIS) reports no later than March 15, 2015.

ADDRESSES: Annual MIS reports may be submitted by electronic submission to the following Internet address: *http://homeport.uscg.mil/Drugtestreports.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Patrick Mannion, Drug and Alcohol Program Manager, Office of Investigations and Casualty Analysis (CG–INV), U.S. Coast Guard Headquarters, telephone 202–372–1033. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels in accordance with 46 CFR 16.230. Every marine employer is required by 46 CFR 16.500 to collect and maintain a record of drug testing program data for each calendar year, and submit this data by 15 March of the following year to the Coast Guard in an annual MIS report.

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year. The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry.

The Coast Guard announces that the minimum random drug testing rate for calendar year 2015 is 25 percent. The Coast Guard may increase this rate if MIS data indicates a qualitative deficiency of reported data or the positive random testing rate is greater than 1.0 percent in accordance with 46 CFR part 16.230(f)(2). MIS data for 2014 indicates that the positive rate is less than one percent industry-wide (0.78 percent).

For 2015, the minimum random drug testing rate will continue at 25 percent of covered employees for the period of January 1, 2015 through December 31, 2015 in accordance with 46 CFR 16.230(e).

Dated: February 3, 2015.

Jonathan C. Burton,

Captain, USCG, Director of Prevention Policy.

[FR Doc. 2015–02543 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0034; OMB No. 1660–0040]

Agency Information Collection Activities: Proposed Collection; Comment Request; Standard Flood Hazard Determination Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; Correction; Extension of Comment Period.

On December 11, 2014, the Federal Emergency Management Agency (FEMA) published an agency information collection notice in the **Federal Register** at 79 FR 73604. In the **ADDRESSES** section, FEMA inadvertently listed the docket ID in (1) *Online* as FEMA–2013–0034. The correct Docket ID is FEMA 2014–0034. Because of the error, FEMA is also extending the comment deadline. The comment deadline has been extended from February 9, 2015 to February 16, 2015.

Dated: February 4, 2015.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–02549 Filed 2–6–15; 8:45 am]

BILLING CODE 9111–53–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0008; OMB No. 1660–0030]

Agency Information Collection Activities: Proposed Collection; Comment Request; Manufactured Housing Operations Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information related to FEMA's temporary housing assistance, which provides temporary housing to eligible survivors of federally declared disasters. This information is required to: (a) Determine whether the infrastructure of the site supports the installation of the temporary housing unit; (b) obtain permission to place the temporary housing unit on the property; and (c) allow ingress and egress to the property where the temporary housing unit is placed.

DATES: Comments must be submitted on or before April 10, 2015.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2015–0008. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Elizabeth McDowell, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686–3630 for further information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 212–4701 or email address: *FEMA-Information-Collections-anagement@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) authorizes the President to provide temporary housing units to include mobile homes and other readily fabricated dwellings to eligible applicants who require temporary housing as a result of a major disaster. Title 44 CFR 206.117 provides the requirements for disaster-related housing needs of individuals and households who are eligible for temporary housing assistance. The information collected provides the facts necessary to determine the feasibility of the proposed site for placement of temporary housing units and so that FEMA can have access to place the temporary housing unit as well as retrieve it at the end of the use.

Collection of Information

Title: Manufactured Housing Operations Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0030.

FEMA Forms: FEMA Form 010–0–09, Request for the Site Inspection; FEMA Form 010–0–10, Landowner's Authorization Ingress-Egress Agreement; FEMA Form 009–0–138, Manufactured Housing Unit Inspection Report; FEMA Form 009–0–136, Unit Installation Work Order; FEMA Form 009–0–130, Maintenance Work Order.

Abstract: FEMA's temporary housing assistance provides temporary housing to eligible survivors of federally declared disasters. This information is required to determine whether the infrastructure of the site supports the installation of a temporary housing unit. This collection also obtains permission to place the unit on the property. The property owner certifies that they will not have a lien placed against the unit for their own debts, thus ensuring they will maintain the property so that FEMA can remove the unit when required.

Affected Public: Individuals or households; business or other for-profit.

Number of Respondents: 25,000.

Number of Responses: 25,000.

Estimated Total Annual Burden Hours: 4,250 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households.	Request for Site Inspection/FEMA Form 010–0–9.	5,000	1	5,000	0.17 (10 minutes).	850	$28.00	$23,800.00
Individuals or Households.	Landowner's Authorization Ingress/Egress Agreement/FEMA Form 010–0–10.	5,000	1	5,000	0.17 (10 minutes).	850	28.00	23,800.00
Business or other for-profit.	Manufactured Housing Unit Inspection Report/FEMA Form 009–0–138.	5,000	1	5,000	0.17 (10 minutes).	850	34.00	29,019.00
Business or other for-profit.	Unit Installation Work Order/FEMA Form 009–0–136.	5,000	1	5,000	0.17 (10 minutes).	850	34.00	29,019.00

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Business or other for-profit.	Maintenance Work Order/FEMA Form 009–0–130.	5,000	1	5,000	0.17 (10 minutes).	850	34.00	29,019.00
Total	.....	25,000	.....	25,000	.....	4,250	.....	134,657.00

Note: The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $134,657.00. There are no annual costs to respondents' operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $2,076,300.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: February 2, 2015.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–02518 Filed 2–6–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0004; OMB No. 1660–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request; Direct Housing Program Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information related to FEMA's temporary housing assistance, which provides temporary housing to eligible survivors of federally declared disasters.

DATES: Comments must be submitted on or before April 10, 2015.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2015–0004. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Elizabeth McDowell, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686–3630 for further information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 212–4701 or email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C 5174, authorizes the President to provide temporary housing units to include manufactured homes and other readily fabricated dwellings to eligible applicants who require temporary housing as a result of a major disaster. Requirements for disaster-related housing needs of individuals and households who are eligible for temporary housing assistance may be found at Title 44 CFR 206.117. The information collected provides the information necessary to determine the feasibility of the site for placement of temporary housing units. The information will also provide FEMA with access to place the temporary housing unit as well as retrieve it at the end of the use.

Collection of Information

Title: Direct Housing Program Forms.

Type of Information Collection: New information collection.

OMB Number: 1660—NEW.

FEMA Forms: FEMA Form 009–0–137, Unit Pad Requirements—Information Checklist; FEMA Form 009–0–131, Sales Calculation Worksheet; FEMA Form 009–0–129, Ready for Occupancy; FEMA Form 009–0–134, Recertification Worksheet; FEMA Form 009–0–135, Temporary Housing Agreement.

Abstract: The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the President to provide temporary housing units to eligible applicants who require temporary housing as a result of a major disaster. 42 U.S.C. 5174. The information collected provides the information necessary to determine the feasibility of the site for placement of temporary housing and so that FEMA can have access to place temporary housing units as well as retrieve it at the end of the use.

Affected Public: Individuals or households; business or other for-profit.

Number of Respondents: 25,000.

Number of Responses: 25,000.

Estimated Total Annual Burden Hours: 4,165 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
Business or other for-profit.	FEMA Form 009–0–137/Unit Pad Requirements—Information Checklist.	5,000	1	5,000	0.1667 (10 mins.).	833	$47.80	$39,817.40
Individuals and Households.	Sales Calculation Worksheet/FEMA Form 009–0–131.	5,000	1	5,000	0.1667 (10 mins.).	833	31.26	26,039.58
Business or other for-profit.	Ready for Occupancy/FEMA Form 009–0–129.	5,000	1	5,000	0.1667 (10 mins.).	833	47.80	39,817.40
Individuals and Households.	Recertification Worksheet/FEMA Form 009–0–134.	5,000	1	5,000	0.1667 (10 mins.).	833	31.26	26,039.58
Individuals and Households.	Temporary Housing Agreement/FEMA Form 009–0–135.	5,000	1	5,000	0.1667 (10 mins.).	833	31.26	26,039.58
Total		25,000		25,000		4,165		157,753.54

Note: The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $157,753.54. There are no annual costs to respondents' operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $2,864,760.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: February 2, 2015.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–02519 Filed 2–6–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1467]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each

community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Mississippi:						
Harrison	City of Gulfport (14–04–8258P).	Mr. Marshall Pemberton, Mississippi State Floodplain Administrator, P.O. Box 267, Jackson, MS 39205.	Department of Urban Development, Building Code Services, 2200 15th Street, Trailer B5, Gulfport, MS 39501.	*http://www.msc.fema.gov/lomc*	Mar. 30, 2015	285253
Harrison	Unincorporated areas of Harrison County(14–04–8258P).	Mr. Marshall Pemberton, Mississippi State Floodplain Administrator, P.O. Box 267, Jackson, MS 39205.	Harrison County Code Office, 15309 Community Road, Gulfport, MS 39503.	*http://www.msc.fema.gov/lomc*	Mar. 30, 2015	285255
Oklahoma:						
Cleveland	City of Moore (14–06–2112P).	Mr. Stephen O. Eddy, Manager, City of Moore, 301 North Broadway Street, Moore, OK 73160.	City Hall, 301 North Broadway Street, Moore, OK 73160.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	400044
Pennsylvania:						
Montgomery ...	Borough of Ambler (14–03–0829P).	The Honorable Jeanne Sorg, Mayor, Borough of Ambler, 122 East Butler Avenue, Ambler, PA 19002.	Borough Hall, 122 East Butler Avenue, Ambler, PA 19002.	*http://www.msc.fema.gov/lomc*	Apr. 3, 2015	420947
Texas:						
Collin	City of Plano (14–06–0359P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Department of Engineering, 1520 K Avenue, Plano, TX 75074.	*http://www.msc.fema.gov/lomc*	Mar. 20, 2015	480140
Dallas and Denton.	City of Coppell (14–06–2759P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	Engineering Department, 265 Parkway Boulevard, Coppell, TX 75019.	*http://www.msc.fema.gov/lomc*	Mar. 19, 2015	480170
Denton	Town of Northlake (14–06–3449P).	The Honorable Peter Dewing, Mayor, Town of Northlake, 1400 FM 407, Northlake, TX 76247.	Town Hall, 1400 FM 407, Northlake, TX 76247.	*http://www.msc.fema.gov/lomc*	Apr. 8, 2015	480782
Denton	Unincorporated areas of Denton County (14–06–2427P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	Apr. 9, 2015	480774

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Denton	Unincorporated areas of Denton County (14–06–3449P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	Apr. 8, 2015	480774
Ellis	City of Midlothian (14–06–1375P).	The Honorable Bill Houston, Mayor, City of Midlothian, 104 West Avenue E, Midlothian, TX 76065.	City Hall, 104 West Avenue E, Midlothian, TX 76065.	*http://www.msc.fema.gov/lomc*	Mar. 5, 2015	480801
Gonzales	City of Gonzales (14–06–1672P).	The Honorable Robert A. Logan, Mayor, City of Gonzales, 820 St. Joseph Street, Gonzales, TX 78629.	820 St. Joseph Street, Gonzales, TX 78629.	*http://www.msc.fema.gov/lomc*	Mar. 25, 2015	480254
Hays	Unincorporated areas of Hays County (14–06–2877P).	The Honorable Bert Cobb, MD, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County Development Services Department, 2171 Yarrington Road, San Marcos, TX 78667.	*http://www.msc.fema.gov/lomc*	Mar. 30, 2015	480321
Tarrant	City of Bedford (14–06–2009P).	The Honorable Jim Griffin, Mayor, City of Bedford, 2000 Forest Ridge Drive, Bedford, TX 76021.	Public Works Department, 1813 Reliance Parkway, Bedford, TX 76021.	*http://www.msc.fema.gov/lomc*	Mar. 19, 2015	480585
Tarrant	City of Fort Worth (14–06–2425P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc*	Mar. 6, 2015	480596

[FR Doc. 2015–02513 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1468]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to

adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Montgomery ...	City of Montgomery (15–04–0121P).	The Honorable Todd Strange, Mayor, City of Montgomery, P.O. Box 1111, Montgomery, AL 36104.	City Hall, 103 North Perry Street, Montgomery, AL 36104.	*http://www.msc.fema.gov/lomc*	Apr. 6, 2015	010174
Shelby	City of Pelham (14–04–9726P).	The Honorable Gary Waters, Mayor, City of Pelham, 3162 Pelham Parkway, Pelham, AL 35124.	City Hall, 3162 Pelham Parkway, Pelham, AL 35124.	*http://www.msc.fema.gov/lomc*	Apr. 9, 2015	010193
California:						
Colusa	Unincorporated areas of Colusa County (14–09–4391P).	The Honorable Kimberly Dolbow Vann, Chair, Colusa County Board of Supervisors, 546 Jay Street, Colusa, CA 95932.	Colusa County Department of Public Works, 1215 Market Street, Colusa, CA 95932.	*http://www.msc.fema.gov/lomc*	Apr. 9, 2015	060022
Sacramento	Unincorporated areas of Sacramento County (14–09–1646P).	The Honorable Jimmie R. Yee, Chairman, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	060262
Santa Clara	Town of Los Altos Hills (15–09–0041P).	The Honorable John Radford, Mayor, Town of Los Altos Hills, 26379 Fremont Road, Los Altos Hills, CA 94022.	Public Works Department, 26379 Fremont Road, Los Altos Hills, CA 94022.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	060342
Colorado:						
El Paso	Unincorporated areas of El Paso County (14–08–1121P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Regional Building Department, 101 West Costilla Street, Colorado Springs, CO 80903.	*http://www.msc.fema.gov/lomc*	Mar. 24, 2015	080059
Florida:						
Charlotte	Unincorporated areas of Charlotte County (14–04–8892P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	120061
Charlotte	Unincorporated areas of Charlotte County (14–04–A501P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Apr. 13, 2015	120061
Collier	Unincorporated areas of Collier County (14–04–3496P).	The Honorable Tom Henning, Chairman, Collier County, Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Planning and Zoning Department, 2800 North Horseshoe Drive, Naples, FL 34104.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	120067

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Duval	City of Jacksonville (14–04–8973P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Department, 214 Hogan Street North, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Mar. 24, 2015	120077
Miami-Dade	City of Miami (14–04–7292P).	The Honorable Tomas Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Emergency Management Department, 444 Southwest 2nd Avenue, 10th Floor, Miami, FL 33130.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	120650
Miami-Dade	City of Sunny Isles Beach (14–04–A336P).	The Honorable Norman S. Edelcup, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	City Hall, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	*http://www.msc.fema.gov/lomc*	Apr. 13, 2015	120688
Sarasota	Unincorporated areas of Sarasota County (14–04–7975P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Zoning Administration Center, 400 South Tamiami Trail, Venice, FL 34293.	*http://www.msc.fema.gov/lomc*	Apr. 6, 2015	125144
Georgia:						
Columbia	Unincorporated areas of Columbia County (14–04–A219P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Stormwater Utility Department, 630 Ronald Reagan Drive, Building B, 2nd Floor, Evans, GA 30809.	*http://www.msc.fema.gov/lomc*	Apr. 9, 2015	130059
New Jersey:						
Somerset	Township of Bridgewater (14–02–2373P).	The Honorable Daniel J. Hayes, Mayor, Township of Bridgewater, 100 Commons Way, Bridgewater, NJ 08807.	Department of Code Enforcement, 700 Garretson Road, Bridgewater, NJ 08807.	*http://www.msc.fema.gov/lomc*	Apr. 9, 2015	340432
North Carolina:						
Durham	City of Durham (14–04–4200P).	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	Public Works Department, 101 City Hall Plaza, Durham, NC 27701.	*http://www.msc.fema.gov/lomc*	Feb. 17, 2014	370086
Gaston	City of Gastonia (14–04–A889P).	The Honorable John Bridgeman, Mayor, City of Gastonia, P.O. Box 1748, Gastonia, NC 28053.	Garland Municipal Business Center, 150 South York Street, Gastonia, NC 28052.	*http://www.msc.fema.gov/lomc*	Mar. 16, 2015	370100
Union	Town of Indian Trail (14–04–A516P).	The Honorable Michael Alvarez, Mayor, Town of Indian Trail, P.O. Box 2430, Indian Trail, NC 28079.	Engineering Department, 130 Blythe Drive, Indian Trail, NC 28079.	*http://www.msc.fema.gov/lomc*	Mar. 30, 2015	370235
Union	Unincorporated areas of of Union County (14–04–A516P).	The Honorable Frank Aikmus, Chairman, Union County Board of Commissioners, 500 North Main Street, Room 921, Monroe, NC 28112.	Union County Planning Department, 500 North Main Street, Monroe, NC 28112.	*http://www.msc.fema.gov/lomc*	Mar. 30, 2015	370234
North Dakota:						
Stark	Unincorporated areas of Stark County (14–08–1100P).	The Honorable Russ Hoff, Chairman, Stark County Board of Commissioners, P.O. Box 130, Dickinson, ND 58602.	Stark County Recorder's Office, 51 3rd Street East, Dickinson, ND 58601.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	385369
South Carolina:						
Beaufort	Town of Bluffton (14–04–5124P).	The Honorable Lisa Sulka, Mayor, Town of Bluffton, 20 Bridge Street, Bluffton, SC 29910.	Growth Management Customer Service Center, 20 Bridge Street, Bluffton, SC 29910.	*http://www.msc.fema.gov/lomc*	Apr. 13, 2015	450251
Charleston	City of Charleston (14–04–9826P).	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	Engineering Department, 75 Calhoun Street, Division 301, Charleston, SC 29401.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	455412
Charleston	Town of Mount Pleasant (14–04–9102P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Planning Department, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	*http://www.msc.fema.gov/lomc*	Mar. 23, 2015	455417
South Dakota:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Brown	City of Aberdeen (14–08–1017P).	The Honorable Mike Levsen, Mayor, City of Aberdeen, 123 South Lincoln Street, Aberdeen, SD 57401.	City Engineer's Office, 123 South Lincoln Street, Aberdeen, SD 57401.	*http://www.msc.fema.gov/lomc*	Mar. 26, 2015	460007
Tennessee:						
Wilson	City of Mt. Juliet (14–04–5022P).	The Honorable Ed Hagerty, Mayor, City of Mt. Juliet, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	City Hall, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	*http://www.msc.fema.gov/lomc*	Mar. 19, 2015	470290
Utah:						
Davis	City of Kaysville (14–08–0801P).	The Honorable Steve A. Hiatt, Mayor, City of Kaysville, 23 East Center Street, Kaysville, UT 84037.	City Hall, 23 East Center Street, Kaysville, UT 84037.	*http://www.msc.fema.gov/lomc*	Mar. 26, 2015	490046
Salt Lake	City of West Jordan (14–08–0959P).	The Honorable Kim V. Rolfe, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	City Hall, 8000 South Redwood Road, West Jordan, UT 84088.	*http://www.msc.fema.gov/lomc*	Apr. 2, 2015	490108
Washington	City of St. George (14–08–1007P).	The Honorable Jon Pike, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	Engineering Department, 175 East 200 North, St. George, UT 84770.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	490177

[FR Doc. 2015–02509 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama: Tuscaloosa (FEMA Docket No.: B–1442).	City of Tuscaloosa (14–04–3253P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	Nov. 19, 2014	010203
Arizona:					
Mohave (FEMA Docket No.: B–1442).	Unincorporated areas of Mohave County (14–09–0834P).	The Honorable Gary Watson, Chairman, Mohave County Board of Supervisors, 700 West Beale Street, Kingman, AZ 86401.	Mohave County Administration Building, 700 West Beale Street, Kingman, AZ 86401.	Nov. 20, 2014	155166
Santa Cruz (FEMA Docket No.: B–1442).	City of Nogales (13–09–1781P).	The Honorable Arturo R. Garino, Mayor, City of Nogales, 777 North Grand Avenue, Nogales, AZ 85621.	Public Works Department, 1450 North Hohokam Drive, Nogales, AZ 85621.	Nov. 12, 2014	040091
California: Napa (FEMA Docket No.: B–1442).	City of Napa (14–09–2231P).	The Honorable Jill Techel, Mayor, City of Napa, P.O. Box 660, Napa, CA 94559.	Public Works Department, 1600 1st Street, Napa, CA 94559.	Nov. 12, 2014	060207
Florida:					
Broward (FEMA Docket No.: B–1435).	City of Fort Lauderdale (14–04–1663P).	The Honorable John P. "Jack" Seiler, Mayor, City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.	City Hall, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.	Nov. 6, 2014	125105
Polk (FEMA Docket No.: B–1435).	Unincorporated areas of Polk County (14–04–2689P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33831.	Nov. 6, 2014	120261
Sarasota (FEMA Docket No.: B–1435).	City of Sarasota (14–04–3830P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	City Hall, 1565 1st Street, Sarasota, FL 34236.	Oct. 22, 2014	125150
Georgia:					
Columbia (FEMA Docket No.: B–1435).	Unincorporated areas of Columbia County (13–04–7901P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, 630 Ronald Regan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Division, 630 Ronald Regan Drive, Building A, Evans, GA 30809.	Nov. 10, 2014	130059
Columbia (FEMA Docket No.: B–1435).	Unincorporated areas of Columbia County (13–04–8301P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, 630 Ronald Regan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Division, 630 Ronald Regan Drive, Building A, Evans, GA 30809.	Nov. 6, 2014	130059
Richmond (FEMA Docket No.: B–1442).	Augusta-Richmond County (14–04–2417P).	The Honorable Deke S. Copenhaver, Mayor, Augusta-Richmond County, 530 Greene Street, Augusta, GA 30901.	Augusta-Richmond County Planning and Development Department, 525 Telfair Street, Augusta, GA 30901.	Nov. 14, 2014	130158
Kentucky: Fayette (FEMA Docket No.: B–1442).	Lexington-Fayette Urban County Government (13–04–1223P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Lexington-Fayette Urban County Government Planning Division, 101 East Vine Street, Lexington, KY 40507.	Nov. 24, 2014	210067
New York:					
Orange (FEMA Docket No.: B–1428).	Town of New Windsor (13–02–1014P).	The Honorable George A. Green, Supervisor, Town of New Windsor, 555 Union Avenue, New Windsor, NY 12553.	Town Hall, 555 Union Avenue, New Windsor, NY 12553.	Nov. 5, 2014	360628
Rockland (FEMA Docket No.: B–1428).	Town of Clarkstown (13–02–1013P).	The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	Nov. 19, 2014	360679
North Carolina:					
Macon (FEMA Docket No.: B–1435).	Unincorporated areas of Macon County (14–04–3043P).	The Honorable Kevin Corbin, Chairman, Macon County Board of Commissioners, 5 West Main Street, Franklin, NC 28734.	Macon County Planning Department, 5 West Main Street, Franklin, NC 28734.	Oct. 16, 2014	370150
Guilford (FEMA Docket No.: B–1423).	City of Greensboro (14–04–4489P).	The Honorable Nancy Vaughn, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Water Resources Department, Stormwater Management Division, Planning and Engineering Section, 2602 South Elm-Eugene Street, Greensboro, NC 27406.	Aug. 12, 2014	375351
South Carolina:					
Charleston (FEMA Docket No.: B–1442).	Town of Mount Pleasant (14–04–3646P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Town Hall, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Nov. 20, 2014	455417

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Charleston (FEMA Docket No.: B–1435).	Town of Mount Pleasant (14–04–4488P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Town Hall, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Nov. 4, 2014	455417
Charleston (FEMA Docket No.: B–1442).	Unincorporated areas of Charleston County (14–04–3646P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 2700 Crestline Drive, North Charleston, SC 29405.	Charleston County Building Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Nov. 20, 2014	455413
Charleston (FEMA Docket No.: B–1435).	Unincorporated areas of Charleston County (14–04–4488P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 2700 Crestline Drive, North Charleston, SC 29405.	Charleston County Building Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Nov. 4, 2014	455413
South Dakota:					
Custer (FEMA Docket No.: B–1442).	Town of Hermosa (14–08–0158P).	The Honorable Linda Kramer, President, Town of Hermosa Board of Trustees, P.O. Box 298, Hermosa, SD 57744.	Planning and Zoning Commission, 230 Main Street, Hermosa, SD 57744.	Nov. 13, 2014	460230
Custer (FEMA Docket No.: B–1442).	Unincorporated areas of Custer County (14–08–0158P).	The Honorable Phil Lampert, Chairman, Custer County Board of Commissioners, 420 Mount Rushmore Road, Custer, SD 57730.	Custer County Department of Planning and Economic Development, 420 Mount Rushmore Road, Custer, SD 57730.	Nov. 13, 2014	460018

[FR Doc. 2015–02505 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

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Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1442).	City of Scottsdale (14–09–2290P).	The Honorable Jim Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Dec. 5, 2014	045012
Maricopa (FEMA Docket No.: B–1448).	Unincorporated areas of Maricopa County (14–09–2380P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	Dec. 19, 2014	040037
Mohave (FEMA Docket No.: B–1448).	Unincorporated areas of Mohave County (14–09–0137P).	The Honorable Hildy Angius, Chair, Mohave County Board of Supervisors, 700 West Beale Street, Kingman, AZ 86401.	Mohave County Administration Building, 700 West Beale Street, Kingman, AZ 86401.	Dec. 22, 2014	040058
Pinal (FEMA Docket No.: B–1448).	Town of Florence (13–09–2571P).	The Honorable Tom Rankin, Mayor, Town of Florence, P.O. Box 2670, Florence, AZ 85132.	Department of Public Works, 425 East Ruggles, Florence, AZ 85232.	Dec. 17, 2014	040084
Pinal (FEMA Docket No.: B–1448).	Unincorporated areas of Pinal County (13–09–2571P).	The Honorable Anthony Smith, Chairman, Pinal County Board of Supervisors, 41600 West Smith Enke Road, Suite 128, Maricopa, AZ 85138.	Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85232.	Dec. 17, 2014	040077
California:					
Alameda (FEMA Docket No.: B–1442).	City of Fremont (14–09–0273P).	The Honorable Bill Harrison, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	Development Services Center, 39550 Liberty Street, Fremont, CA 94538.	Nov. 28, 2014	065028
San Diego (FEMA Docket No.: B–1442).	Unincorporated areas of San Diego County (14–09–1892P).	The Honorable Dianne Jacob, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	San Diego County Department of Public Works, Flood Control Division, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	Dec. 2, 2014	060284
Tulare (FEMA Docket No.: B–1442).	Unincorporated areas of Tulare County (13–09–2741P).	The Honorable Phillip Cox, Chairman, Tulare County Board of Supervisors, 2800 West Burrel Avenue, Visalia, CA 93291.	Tulare County Resource Management Headquarters, 5961 South Mooney Boulevard, Visalia, CA 93277.	Dec. 4, 2014	065066
Ventura (FEMA Docket No.: B–1448).	City of Camarillo (14–09–2662P).	The Honorable Kevin Kildee, Mayor, City of Camarillo, 601 Carmen Drive, Camarillo, CA 93010.	Public Works Department, 601 Carmen Drive, Camarillo, CA 93010.	Dec. 18, 2014	065020
Ventura (FEMA Docket No.: B–1448).	Unincorporated areas of Ventura County (14–09–2662P).	The Honorable Steve Bennett, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	Ventura County Public Works Department, 800 South Victoria Avenue, Ventura, CA 93009.	Dec. 18, 2014	060413
Colorado:					
Adams (FEMA Docket No.: B–1448).	City of Aurora (14–08–0672P).	The Honorable Steve Hogan, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	Dec. 19, 2014	080002
Arapahoe (FEMA Docket No.: B–1442).	City of Cherry Hills Village (14–08–0050P).	The Honorable Doug Tisdale, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.	City Hall, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.	Dec. 5, 2014	080013
Boulder (FEMA Docket No.: B–1442).	Town of Lyons (14–08–0669P).	The Honorable John O'Brien, Mayor, Town of Lyons, P.O. Box 49, Lyons, CO 80540.	Town Hall, 432 5th Avenue, Lyons, CO 80540.	Dec. 9, 2014	080029
Eagle (FEMA Docket No.: B–1448).	Town of Basalt (14–08–0868P).	The Honorable Jacque Whitsitt, Mayor, Town of Basalt, 101 Midland Avenue, Basalt, CO 81621.	Town Hall, 101 Midland Avenue, Basalt, CO 81621.	Nov. 28, 2014	080052
Eagle (FEMA Docket No.: B–1448).	Unincorporated areas of Eagle County (14–08–0868P).	The Honorable Jill Ryan, Chair, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Building and Engineering Department, 500 Broadway Street, Eagle, CO 81631.	Nov. 28, 2014	080051
Jefferson (FEMA Docket No.: B–1442).	City of Lakewood (14–08–0872P).	The Honorable Bob Murphy, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226.	Engineering Department, 480 South Allison Parkway, Lakewood, CO 80226.	Nov. 28, 2014	085075
Jefferson (FEMA Docket No.: B–1442).	Unincorporated areas of Jefferson County (14–08–0683P).	The Honorable Faye Griffin, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	Dec. 5, 2014	080087

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Larimer (FEMA Docket No.: B–1448).	City of Fort Collins (14–08–0580P).	The Honorable Karen Weitkunat, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	Stormwater Utilities Department, 700 Wood Street, Fort Collins, CO 80521.	Dec. 15, 2014	080102
Larimer (FEMA Docket No.: B–1448).	Unincorporated areas of Larimer County (14–08–0580P).	The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Fort Collins, CO 80521.	Dec. 15, 2014	080101
Florida:					
Collier (FEMA Docket No.: B–1448).	City of Marco Island (14–04–5856P).	The Honorable Kenneth E. Honecker, Chairman, Marco Island City Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	City Hall, 50 Bald Eagle Drive, Marco Island, FL 34145.	Dec. 11, 2014	120426
Duval (FEMA Docket No.: B–1448).	City of Atlantic Beach (14–04–0427P).	The Honorable Carolyn Woods, Mayor, City of Atlantic Beach, 800 Seminole Road, Atlantic Beach, FL 32233.	City Hall, 800 Seminole Road, Atlantic Beach, FL 32233.	Dec. 22, 2014	120075
Duval (FEMA Docket No.: B–1448).	City of Jacksonville (14–04–0427P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	Dec. 22, 2014	120077
Duval (FEMA Docket No.: B–1448).	City of Jacksonville (14–04–1465P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	Dec. 11, 2014	120077
Miami-Dade (FEMA Docket No.: B–1448).	City of Sunny Isles Beach (14–04–4655P).	The Honorable Norman S. Edelcup, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Government Center, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Dec. 22, 2014	120688
Monroe (FEMA Docket No.: B–1442).	Unincorporated areas of Monroe County (14–04–5223P).	The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	Dec. 2, 2014	125129
Polk (FEMA Docket No.: B–1442).	Unincorporated areas of Polk County (13–04–6579P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33830.	Nov. 28, 2014	120261
Sarasota (FEMA Docket No.: B–1448).	City of Sarasota (14–04–5350P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	City Hall, 1565 1st Street, Sarasota, FL 34236.	Dec. 22, 2014	125150
Sarasota (FEMA Docket No.: B–1442).	Town of Longboat Key (14–04–6848P).	The Honorable Jim Brown, Mayor, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Town Hall, 501 Bay Isles Road, Longboat Key, FL 34228.	Dec. 11, 2014	125126
Volusia (FEMA Docket No.: B–1442).	City of Orange City (14–04–0649P).	The Honorable Tom Laputka, Mayor, City of Orange City, 205 East Graves Avenue, Orange City, FL 32763.	Planning Department, 205 East Graves Avenue, Orange City, FL 32763.	Dec. 2, 2014	120633
Georgia:					
Columbia (FEMA Docket No.: B–1442).	Unincorporated areas of Columbia County (14–04–0306P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Stormwater Department, 603 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	Dec. 1, 2014	130059
Decatur (FEMA Docket No.: B–1448).	City of Bainbridge (14–04–1920P).	The Honorable Edward Reynolds, Mayor, City of Bainbridge, P.O. Box 158, Bainbridge, GA 39818.	City Hall, 107 Broad Street, Bainbridge, GA 39817.	Nov. 17, 2014	130204
Decatur (FEMA Docket No.: B–1448).	Unincorporated areas of Decatur County (14–04–1920P).	The Honorable Frank Loeffler, Chairman, Decatur County Board of Commissioners, P.O. Box 726, Bainbridge, GA 39818.	Decatur County Planning Department, 309 Airport Road, Bainbridge, GA 39817.	Nov. 17, 2014	130451
Gwinnett (FEMA Docket No.: B–1448).	City of Duluth (14–04–1324P).	The Honorable Nancy Harris, Mayor, City of Duluth, 3167 Main Street, Duluth, GA 30096.	Department of Planning and Development, 3578 West Lawrenceville Street, Duluth, GA 30096.	Nov. 24, 2014	130098
Richmond (FEMA Docket No.: B–1442).	Augusta-Richmond County (14–04–4315P).	The Honorable Deke S. Copenhaver, Mayor, Augusta-Richmond County, 530 Greene Street, Augusta, GA 30901.	Augusta-Richmond County Planning and Development Department, 525 Telfair Street, Augusta, GA 30901.	Nov. 28, 2014	130158
South Carolina:					
Charleston (FEMA Docket No.: B–1442).	City of Charleston (14–04–7487X).	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	Department of Public Services, 75 Calhoun Street, 3rd Floor, Charleston, SC 29401.	Dec. 2, 2014	455412

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Lancaster (FEMA Docket No.: B–1442).	Unincorporated areas of Lancaster County (14–04–4016P).	The Honorable Larry McCullough, Chairman, Lancaster County Council, 101 North Main Street, Lancaster, SC 29721.	Lancaster County Building and Zoning Department, 101 North Main Street, Lancaster, SC 29721.	Dec. 11, 2014	450120
South Dakota:					
Lawrence (FEMA Docket No.: B–1442).	City of Spearfish (14–08–0440P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783.	City Hall, 625 North 5th Street, Spearfish, SD 57783.	Dec. 9, 2014	460046
Minnehaha (FEMA Docket No.: B–1442).	City of Hartford (14–08–0151P).	The Honorable Paul Zimmer, Mayor, City of Hartford, P.O. Box 727, Hartford, SD 57033.	City Hall, 125 North Main, Hartford, SD 57033.	Dec. 1, 2014	460180

[FR Doc. 2015–02506 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas:					
Benton (FEMA Docket No.: B–1441).	City of Bentonville (13–06–3762P).	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue Bentonville, AR 72712.	305 Southwest A Street, Bentonville, AR 72712.	Dec. 5, 2014	050012
Benton (FEMA Docket No.: B–1441).	Unincorporated areas of Benton County (13–06–3762P).	The Honorable Robert D. Clinard, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	Benton County, 905 Northwest 8th Street, Bentonville, AR 72712.	Dec. 5, 2014	050419

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Saline (FEMA Docket No.: B–1441).	City of Bryant (14–06–1117P).	The Honorable Jill Dabbs, Mayor, City of Bryant, 210 Southwest 3rd Street, Bryant, AR 72022.	210 Southwest 3rd Street, Bryant, AR 72022.	Dec. 10, 2014	050308
New York:					
Onondaga (FEMA Docket No.: B–1432).	Town of Cicero (13–02–1264P).	The Honorable Jessica Zambrano, Supervisor, Town of Cicero, 8236 Brewerton Road, Cicero, NY 13039.	Town Hall, 8236 Brewerton Road, Cicero, NY 13039.	Dec. 9, 2014	360572
Oklahoma:					
Oklahoma (FEMA Docket No.: B–1441).	City of Edmond (13–06–4532P).	Mr. Larry Stevens, Manager, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	24 East 1st Street, Edmond, OK 73083.	Dec. 3, 2014	400252
Oklahoma (FEMA Docket No.: B–1441).	City of Edmond (13–06–4538P).	Mr. Larry Stevens, Manager, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	24 East 1st Street, Edmond, OK 73083.	Dec. 3, 2014	400252
Oklahoma (FEMA Docket No.: B–1441).	City of Oklahoma City (14–06–0510P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	Dec. 12, 2014	405378
Pennsylvania:					
Potter (FEMA Docket No.: B–1441).	Township of Portage (14–03–1386P).	The Honorable Norman D. McAfoose, Chairman, Portage Township Board of Supervisors, 23 State Street, Austin, PA 16720.	Portage Township Hall, 986 Costello Road, Austin, PA 16720.	Dec. 4, 2014	421985
Texas:					
Bexar (FEMA Docket No.: B–1441).	City of San Antonio (14–06–1333P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Dec. 12, 2014	480045
Bexar (FEMA Docket No.: B–1441).	City of San Antonio (14–06–1934P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Dec. 10, 2014	480045
Dallas (FEMA Docket No.: B–1441).	City of Garland (13–06–4550P).	The Honorable Douglas Athas, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	800 Main Street, Garland, TX 75040.	Dec. 12, 2014	485471
Dallas and Denton (FEMA Docket No.: B–1444).	City of Lewisville (14–06–1734P).	The Honorable Dean Ueckert, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	City Hall, 151 West Church Street, Lewisville, TX 75057.	Dec. 1, 2014	480195
Denton (FEMA Docket No.: B–1444).	City of The Colony (14–06–2342P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	6800 Main Street, The Colony, TX 75056.	Dec. 15, 2014	481581
Denton (FEMA Docket No.: B–1444).	Town of Flower Mound (14–06–0962P).	The Honorable Thomas Hayden, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Engineering Department, 1001 Cross Timbers Road, Suite 3220, Flower Mound, TX 75028.	Dec. 11, 2014	480777
Denton (FEMA Docket No.: B–1444).	Unincorporated areas of Denton County (14–06–0224P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	Dec. 12, 2014	480774
Guadalupe (FEMA Docket No.: B–1441).	City of Cibolo (14–06–1171P).	The Honorable Lisa M. Jackson, Mayor, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	City Hall, 200 South Main Street, Cibolo, TX 78108.	Nov. 28, 2014	480267
Harris (FEMA Docket No.: B–1424).	City of Houston (14–06–1647P).	The Honorable Annise D. Parker, Mayor, City of Houston, P. O. Box 1562, Houston, TX 77251.	Floodplain Manager's Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	Oct. 6, 2014	480296
Parker (FEMA Docket No.: B–1441).	City of Weatherford (14–06–0306P).	The Honorable Dennis Hooks, Mayor, City of Weatherford, 303 Palo Pinto Street, Weatherford, TX 76086.	Engineering Department, 303 Palo Pinto Street, Weatherford, TX 76086.	Nov. 28, 2014	480522
Parker (FEMA Docket No.: B–1441).	Unincorporated areas of Parker County (14–06–0306P).	The Honorable Mark Riley, Parker County Judge, 1 Courthouse Square, Weatherford, TX 76086.	Parker County Permitting Office, 1114 Santa Fe Drive, Weatherford, TX 76086.	Nov. 28, 2014	480520
Tarrant (FEMA Docket No.: B–1444).	City of Fort Worth (14–06–1000P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	Dec. 17, 2014	480596
Wagoner (FEMA Docket No.: B–1437).	City of Wagoner (14–06–0309P).	The Honorable James Jennings, Mayor, City of Wagoner, P.O. Box 406 Wagoner, OK 74477.	Wagoner County, 306 East Cherokee Street, Wagoner, OK 74467.	Nov. 28, 2014	400219
Wagoner (FEMA Docket No.: B–1437).	Unincorporated areas of Wagoner County (14–06–0309P).	The Honorable James Hanning, Chairman, Wagoner County Commissioners, P.O. Box 156 Wagoner, OK 74477.	Wagoner County, 306 East Cherokee Street, Wagoner, OK 74467.	Nov. 28, 2014	400215

[FR Doc. 2015–02496 Filed 2–6–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1466]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 11, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1466, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Harford County, Maryland, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Aberdeen	Planning Department, 60 North Parke Street, Aberdeen, MD 21001.
City of Havre De Grace	Planning Department, 711 Pennington Avenue, Havre De Grace, MD 21078.
Town of Bel Air	Planning Department, 705 East Churchville Road, Bel Air, MD 21014.
Unincorporated Areas of Harford County	Planning and Zoning Department, 220 South Main Street, Bel Air, MD 21014.
Fayette County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	

Community	Community map repository address
Borough of Belle Vernon	Borough Building, 10 Main Street, Belle Vernon, PA 15012.
Borough of Brownsville	Borough Office, 200 Second Street, Brownsville, PA 15417.
Borough of Dawson	Borough Building, 209 Howell Street, Dawson, PA 15428.
Borough of Dunbar	Borough Building, 47 Connellsville Street, Dunbar, PA 15431.
Borough of Everson	Borough Building, 232 Brown Street, Everson, PA 15631.
Borough of Fairchance	Borough Building, 125 West Church Street, Fairchance, PA 15436.
Borough of Markleysburg	Borough Municipal Building, 150 Main Street, Markleysburg, PA 15459.
Borough of Masontown	Borough Municipal Building, 1 East Church Avenue, Masontown, PA 15461.
Borough of Newell	Borough Municipal Building, 412 Second Street, Newell, PA 15466.
Borough of Ohiopyle	Borough Building, Rear 17 Sherman Street, Ohiopyle, PA 15470.
Borough of Perryopolis	Borough Office, 312 Independence Street, Perryopolis, PA 15473.
Borough of Point Marion	Borough Building, 426 Morgantown Street, Point Marion, PA 15474.
Borough of Smithfield	Borough Building, 14 Water Street, Smithfield, PA 15478.
Borough of South Connellsville..	Borough Building, 1503 South Pittsburgh Street, South Connellsville, PA 15425.
Borough of Vanderbilt	Borough Building, 196 Main Street, Vanderbilt, PA 15486.
City of Connellsville	City Hall, 110 North Arch Street, Connellsville, PA 15425.
City of Uniontown	City Hall, 20 North Gallatin Avenue, Uniontown, PA 15401.
Township of Brownsville	Township Building, 232 Brown Street, Brownsville, PA 15417.
Township of Bullskin	Bullskin Township Municipal Building, 178 Shenandoah Road, Connellsville, PA 15425.
Township of Connellsville	Township Secretary's Office, 166 McCoy Hollow Road, Connellsville, PA 15425.
Township of Dunbar	Dunbar Township Municipal Building, 3 Bell Drive, Connellsville, PA 15431.
Township of Franklin	Franklin Township Building, 353 Town and Country Road, Vanderbilt, PA 15486.
Township of Georges	Georges Township Building, 1151 Township Drive, Uniontown, PA 15401.
Township of German	German Township Municipal Building, 2 Long Street, McClellandtown, PA 15458.
Township of Henry Clay	Henry Clay Township Building, 156 Martin Road, Markleysburg, PA 15459.
Township of Jefferson	Jefferson Township Municipal Building, 262 Stuckslager Road, Perryopolis, PA 15473.
Township of Lower Tyrone	Lower Tyrone Township Building, 456 Banning Road, Dawson, PA 15428.
Township of Luzerne	Luzerne Township Building, 415 Hopewell Road, Brownsville, PA 15417.
Township of Menallen	Menallen Township Building, 427 Searight-Herbert Road, Uniontown, PA 15401.
Township of Nicholson	Nicholson Township Municipal Building, 142 Woodside Old Frame Road, Smithfield, PA 15478.
Township of North Union	North Union Township Municipal Building, 7 South Evans Station Road, Lemont Furnace, PA 15456.
Township of Perry	Perry Township Building, One Township Drive, Star Junction, PA 15482.
Township of Redstone	Redstone Township Building, 225 Twin Hills Road, Grindstone, PA 15442.
Township of Saltlick	Saltlick Township Municipal Building, 147 Municipal Building Road, Melcroft, PA 15462.
Township of South Union	South Union Township Building, 151 Township Drive, Uniontown, PA 15401.
Township of Springfield	Springfield Township Municipal Building, 755 Mill Run Road, Mill Run, PA 15464.
Township of Springhill	Springhill Township Municipal Building, 198 Lake Lynn Road, Lake Lynn, PA 15451.
Township of Stewart	Stewart Township Municipal Building, 373 Grover Road, Ohiopyle, PA 15470.
Township of Upper Tyrone	Upper Tyrone Township Building, 170 Municipal Drive, Connellsville, PA 15425.
Township of Washington	Washington Township Offices, 1390 Fayette Avenue, Belle Vernon, PA 15012.
Township of Wharton	Wharton Township Municipal Building, 114 Elliotsville Road, Farmington, PA 15437.
Mingo County, West Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Williamson	City Hall, 107 East 4th Avenue, Williamson, WV 25661.
Town of Kermit	City Hall, 101 Main Street, Kermit, WV 25674.
Town of Matewan	City Hall, 306 McCoy Alley, Matewan, WV 25678.
Unincorporated Areas of Mingo County	Mingo County Floodplain Management Office, 75 East 2nd Avenue, Room 325, Williamson, WV 25661.

[FR Doc. 2015–02515 Filed 2–6–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1462]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new

buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 11, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1462, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Bowman County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Bowman	City Hall, 101 1st Avenue Northeast, Bowman, ND 58623.
City of Gascoyne	City Hall, 100 West Nordell Avenue, Gascoyne, ND 58653.
City of Scranton	City Hall, 109 2nd Avenue, Scranton, ND 58653.
Unincorporated Areas of Bowman County	County Administration Building, 104 1st Street Northwest, Bowman, ND 58623.
Pembina County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Cavalier	City Hall, 301 Division Avenue North, Cavalier, ND 58220.
City of Drayton	City Hall, 122 South Main Street, Drayton, ND 58225.
City of Pembina	City Hall, 152 West Rolette Street, Pembina, ND 58271.
City of St. Thomas	City Hall, 301 Main Street, St. Thomas, ND 58276.
Township of Cavalier	Pembina County Courthouse, 301 Dakota Street West, Cavalier, ND 58220.
Township of Drayton	Pembina County Courthouse, 301 Dakota Street West, Cavalier, ND 58220.
Township of Joliette	Pembina County Courthouse, 301 Dakota Street West, Cavalier, ND 58220.
Unincorporated Areas of Pembina County	Pembina County Courthouse, 301 Dakota Street West, Cavalier, ND 58220.

[FR Doc. 2015–02517 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1415]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On July 9, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 38934. The table provided here represents the proposed flood hazard determinations and communities affected for Rockingham County, New Hampshire (All Jurisdictions).

DATES: Comments are to be submitted on or before May 11, 2015.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1415, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 79 FR 38934 in the July 9, 2014, issue of the **Federal Register**, FEMA published a table titled ''Rockingham County, New Hampshire (All Jurisdictions)''. This table contained inaccurate information as to the communities affected by the proposed flood hazard determinations.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Rockingham County, New Hampshire (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Portsmouth	City Hall, One Junkins Avenue, Portsmouth, NH 03801.
Seabrook Beach Village District..	Town Office, 99 Lafayette Road, Seabrook, NH 03874.
Town of Exeter	Town Office, 10 Front Street, Exeter, NH 03833.
Town of Greenland	Town Office, 575 Portsmouth Avenue, Greenland, NH 03840.
Town of Hampton	Town Office, 100 Winnacunnet Road, Hampton, NH 03842.
Town of Hampton Falls	Town Hall, One Drinkwater Road, Hampton Falls, NH 03844.
Town of New Castle	Town Office, 49 Main Street, New Castle, NH 03854.
Town of Newfields	Town Hall, 65 Main Street, Newfields, NH 03856.
Town of Newington	Town Office, 205 Nimble Hill Road, Newington, NH 03801.
Town of Newmarket	Town Hall, 186 Main Street, Newmarket, NH 03857.
Town of North Hampton	Town Office, 233 Atlantic Avenue, North Hampton, NH 03862.
Town of Rye	Town Office, 10 Central Road, Rye, NH 03870.
Town of Seabrook	Town Office, 99 Lafayette Road, Seabrook, NH 03874.
Town of Stratham	Town Office, 10 Bunker Hill Avenue, Stratham, NH 03885.

[FR Doc. 2015–02485 Filed 2–6–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1463]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 11, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1463, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 16, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Brown County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Nashville	201 Locust Lane, Nashville, IN 47448.
Unincorporated Areas of Brown County	201 Locust Lane, Nashville, IN 47448.
Geary County, Kansas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Grandview Plaza	City Hall, 406 State Street, Grandview Plaza, KS 66441.
City of Junction City	Municipal Building, 700 North Jefferson Street, Junction City, KS 66441.

Community	Community map repository address
City of Milford	City Hall, 201 12th Street, Milford, KS 66514.
Unincorporated Areas of Geary County	Geary County Municipal Building, 700 North Jefferson Street, Junction City, KS 66441.
Grand Traverse County, Michigan (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Charter Township of East Bay	East Bay Charter Township Hall, 1965 Three Mile Road North, Traverse City, MI 49696.
Charter Township of Garfield	Garfield Charter Township Hall, 3848 Veterans Drive, Traverse City, MI 49684.
City of Traverse City	City Hall, 400 Boardman Avenue, Traverse City, MI 49684.
Township of Acme	Acme Township Hall, 6042 Acme Road, Williamsburg, MI 49690.
Township of Blair	Blair Township Hall, 2121 County Road 633, Grawn, MI 49637.
Township of Green Lake	Green Lake Township Hall, 9394 10th Street, Interlochen, MI 49643.
Township of Long Lake	Long Lake Township Hall, 8870 North Long Lake Road, Traverse City, MI 49685.
Township of Paradise	Paradise Township Hall, 2300 East M113, Kingsley, MI 49649.
Township of Peninsula	Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686.
Township of Union	Union Township Hall, 5020 Fife Lake Road, Fife Lake, MI 49633.
Township of Whitewater	Whitewater Township Hall, 5777 Vinton Road, Williamsburg, MI 49690.
Village of Kingsley	Village Hall, 207 South Brownson Avenue, Kingsley, MI 49649.
Colfax County, Nebraska, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Clarkson	City Office, 120 West 2nd Street, Clarkson, NE 68629.
City of Schuyler	Municipal Building, 1103 B Street, Schuyler, NE 68661.
Unincorporated Areas of Colfax County	Colfax County Courthouse, 411 East 11th Street, Schuyler, NE 68661.
Village of Howells	Village Hall, 128 North 3rd Street, Howells, NE 68641.
Village of Leigh	Village Office, 109 Short Street, Lehigh, NE 68643.
Village of Richland	Colfax County Courthouse, 411 East 11th Street, Schuyler, NE 68661.
Village of Rogers	Village Clerk's Office, 160 Center Street, Rogers, NE 68659.

[FR Doc. 2015–02497 Filed 2–6–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5844–N–01]

Section 8 Housing Assistance Payments Program—Annual Adjustment Factors, Fiscal Year 2015

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Fiscal Year (FY) 2015 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2015 AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. Beginning with the FY 2014 AAFs and continuing with these FY 2015 AAFs, the Puerto Rico CPI is used in place of the South Region CPI for all areas in Puerto Rico. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. A separate **Federal Register** Notice will be published at a later date that will identify the inflation factors that will be used to adjust tenant-based rental assistance funding for FY 2015.

DATES: *Effective Date:* February 9, 2015.

FOR FURTHER INFORMATION CONTACT: Contact Becky Primeaux, Director, Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–4300, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other Section 8 programs; and Marie Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–402–5866, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Tables showing AAFs will be available electronically from the HUD data information page at *http://www.huduser.org/portal/datasets/aaf.html*.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.,* pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of Section 8 programs that use the AAFs:

Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs;

Category 2: The Section 8 Loan Management (LM) and Property Disposition (PD) programs; and

Category 3: The Section 8 Project-Based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Tenant-based Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002–10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97–57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program) the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.,* unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).)

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that ''the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less . . .'' (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate program, HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Tables 1 and 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

AAF Tables 1 and 2 are posted on the HUD User Web site at *http://www.huduser.org/portal/datasets/aaf.html.* There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, *i.e.,* where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.,* where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''Highest Cost Utility Included.'' If highest cost utility is not included, select the AAF from the column for ''Highest Cost Utility Excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded.''

AAFs are calculated using CPI data on ''rent of primary residence'' and ''fuels and utilities.'' [1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the ''contract rent'' which includes units with all utilities included in the rent, units with some utilities included in the rent, and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and also American Community Survey (ACS) data on the ratio of utilities to rents. For Puerto Rico, the Puerto Rico Community Survey (PRCS) is used to determine the ratio of utilities to rents, resulting in different AAFs for some metropolitan areas in Puerto Rico.[2]

Survey Data Used To Produce AAFs

The rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2012 to 2013. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2012 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used to produce AAFs comes from 2012 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called the ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specific geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions (to be used for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2015 FMRs.

Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.org/portal/datasets/aaf.html.* The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not separately listed in the Area Definitions Table at *http://www.huduser.org/portal/datasets/aaf.html.*

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *www.HUDUSER.org.*

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions and these counties, are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

Puerto Rico uses its own AAFs calculated from the Puerto Rico CPI as adjusted by the PRCS, the Virgin Islands uses the South Region AAFs and the Pacific Islands uses the West Region AAFs. All areas in Hawaii use the AAFs listed next to ''Hawaii'' in the Tables which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

Dated: January 27, 2015.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2015–02622 Filed 2–6–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5832–N–01]

60-Day Notice of Proposed Information Collection: Comment Request; Community Development Block Grant Entitlement Program

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 10, 2015.

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, Departmental Paperwork Reduction Act Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410; telephone: 202–708–3400 (this is not a toll-free number) or email Ms. Pollard for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Gloria Coates, Community Planning and Development Specialist, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

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: Community Development Block Grant Entitlement Program.

OMB Approval Number: 2506–0077.

Type of Request: Revision of a currently approved collection. The current OMB approval expires on August 31, 2015.

Form Number: Not applicable.

Information and Proposed Use: This request identifies the estimated reporting burden associated with information that CDBG entitlement grantees will report in IDIS for CDBG-assisted activities, recordkeeping requirements, and reporting requirements. Grantees are encouraged to update their accomplishments in IDIS on a quarterly basis. In addition, grantees are required to retain records necessary to document compliance with statutory and regulatory requirements, Executive Orders, applicable OMB Circulars, and determinations required to be made by grantees as a determination of eligibility. Grantees are required to prepare and submit their Consolidated Annual Performance and Evaluation Reports, which demonstrate the progress grantees make in carrying out CDBG-assisted activities listed in their consolidated plans. This report is due to HUD 90 days after the end of the grantee's program year. The information required for any particular activity is generally based on the eligibility of the activity and which of the three national objectives (benefit low- and moderate-income persons; eliminate/prevent slums or blight; or meet an urgent need) the grantee has determined that the activity will address.

Respondents: Grant recipients (metropolitan cities and urban counties) participating in the CDBG Entitlement Program.

Estimation Number of Respondents: 1,164.

Estimation Number of Responses: The proposed frequency of the response to the collection is on an annual basis.

Frequency of Response: Annually.

Total Estimated Burdens: The total estimated burden is 544,984.

Information collection 2506–0077	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Record-keeping	1,164	1	1,164	129.2	150,388		
Reporting	1,164	4	4,656	78.50	365,496		
Maintain Documentation	1,164	1	1,164	25	29,100		
Total			6,984	42	544,984	36.60	$1,789,300.80

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: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 2015.

Clifford Taffet,

General Deputy Secretary for Community Planning and Development.

[FR Doc. 2015–02613 Filed 2–6–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5832–N–02]

60-Day Notice of Proposed Information Collection: Comment Request; CDBG Urban County Qualification/ Requalification Processes

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 10, 2015.

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, Departmental Paperwork Reduction Act Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410; telephone: 202–708–3400 (this is not a toll-free number) or email Ms. Pollard for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Gloria Coates, Community Planning and Development Specialist, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

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: Community Development Block Grant (CDBG) Urban County Qualification/ Requalification Processes.

OMB Approval Number: 2506–0170.

Type of Request: Existing collection number will expire May 31, 2015.

Form Numbers: N/A.

Description of the Need for the Information and Proposed Use: The Housing and Community Development Act of 1974, as amended, at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may enter into a cooperation agreement to participate in the CDBG program as part of the county. Section 102(d) of the statute specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county is used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York towns undertook a similar process every three years. However, after consultation with program counsel, it was determined that a requalification process for New York towns is unnecessary because the units of general local government in New York towns do not have the same statutory notice rights (under section 102(e) of the Housing and Community Development Act of 1974) as units of general local government participating in an urban county. In addition, each New York town has automatic renewing agreements with the incorporated units of general local governments contained within their boundaries. Therefore, it is presumed that all incorporated units of general local government will continue to participate in the New York towns in which they are located unless Headquarters is notified to the contrary.

Respondents: Urban counties that are eligible as entitlement grantees of the CDBG program.

Estimation Number of Respondents: There are currently 185 qualified urban counties participating in the CDBG program that must requalify every three years.

Frequency of Response: On average, two new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 100 hours to review instructions, contact communities in the county, prepare and review agreements, obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 60 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability to use agreements with no specified end date. Use of such ''renewable'' agreements enables the grantee to merely notify affected participating UGLGs in writing that their agreement will automatically be renewed unless the UGLG terminates the agreement in writing, rather than executing a new agreement every three years.

Average of 2 new urban counties qualify per year.	2 × 100 hrs = 200 hrs.
185 grantees re-qualify on tri-ennial basis; average annual number of respondents = 62.	62 × 60 hrs. = *3,720* hrs.
Total combined burden hours.	3,920 hours.

This total number of combined burden hours can be expected to increase annually by 200 hours, given the average of two new urban counties becoming eligible entitlement grantees each year.

Information collection 2506–0170	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
	2	2	2	100	200	.....	.....
	185	1	62	60	3,720	.....	.....
Total	.....	.....	.....	.....	3,920	18.00	$70,560

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. 35.

Dated: January 29, 2015.

Clifford Taffet,

General Deputy Secretary for Community Planning and Development.

[FR Doc. 2015–02617 Filed 2–6–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156/A0J351010.999900/AAKL008000]

Renewal of Agency Information Collection for Law and Order on Indian Reservations—Marriage and Dissolution Applications

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Law and Order on Indian Reservations—Marriage & Dissolution Applications, which concerns marriage and dissolution of a marriage in a Court of Indian Offenses. The information collection is currently authorized by OMB Control Number 1076–0094. This information collection expires April 30, 2015.

DATES: Submit comments on or before April 10, 2015.

ADDRESSES: You may submit comments on the information collection to Katherine Scotta, Office of Justice Services, Bureau of Indian Affairs, 1849 C Street NW., MS–2603–MIB, Washington, DC 20240; email: *Katherine.Scotta@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Scotta, (202) 208–6711.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs is seeking renewal of the approval for the information collection conducted under 25 CFR 11.600(c) and 11.606(c). This information collection allows the Clerk of the Court of Indian Offenses to collect personal information necessary for a Court of Indian Offenses to issue a marriage license or dissolve a marriage. Courts of Indian Offenses have been established on certain Indian reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 13, which authorize appropriations for ''Indian judges.'' The courts provide for the administration of justice for Indian tribes in those areas where the tribes retain jurisdiction over Indians, exclusive of State jurisdiction, but where tribal courts have not been established to exercise that jurisdiction and the tribes has, by resolution or constitutional amendment, chosen to use the Court of Indian Offenses. Accordingly, Courts of Indian Offenses exercise jurisdiction under 25 CFR 11. Domestic relations are governed by 25 CFR 11.600, which authorizes the Court of Indian Offenses to conduct and dissolve marriages. In order to obtain a marriage licenses in a Court of Indian Offenses, applicants must provide the six items of information listed in 25 CFR 11.600(c), including identifying information, such a Social Security number, information on previous marriage, relationship to the other applicant, and a certificate of the results of any medical examination required by applicable tribal ordinances or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located. To dissolve a marriage, applicants must provide the six items of information listed in 25 CFR 11.606(c), including information on occupation and residency (to establish jurisdiction), information on whether the parties have lives apart for at least 180 days or if there is serious marital discord warranting dissolution, and information on the children of the marriage and whether the wife is pregnant (for the court to determine the appropriate level of support that may be required from the non-custodial parent). (25 CFR 11.601) Two forms are used as part of this information collection, the Marriage License Application and the Dissolution of Marriage Application.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0094.

Title: Law and Order on Indian Reservations—Marriage & Dissolution Applications.

Brief Description of Collection: Submission of this information allows applicants to obtain a benefit, namely, the issuance of a marriage license or a decree of dissolution of a marriage license from the Court of Indian Offenses.

Type of Review: Extension without change of currently approved collection.

Respondents: Individuals.

Number of Respondents: 260 per year, on average.

Frequency of Response: On occasion.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Hour Burden: 65 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: February 3, 2015.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–02542 Filed 2–6–15; 8:45 am]

BILLING CODE 4310–G6–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD07000 L16100000.DS0000 15XL1109AF]

Notice of Intent To Amend the California Desert Conservation Area Plan and Prepare an Environmental Impact Statement/Environmental Impact Report for a Proposed Recreation Area Management Plan and General Plan Update for the Management of Ocotillo Wells State Vehicular Recreation Area in Imperial County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) El Centro Field Office, California, and California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (OHMVR) intend to prepare a California Desert Conservation Area (CDCA) Plan Amendment with an associated joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the Ocotillo Wells State Vehicular Recreation Area (SVRA) for the proposed Recreation Area Management Plan (RAMP) and General Plan update. By this notice, the BLM and OHMVR are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the CDCA Plan Amendment with associated joint EIS/EIR. Comments on issues may be submitted in writing until March 11, 2015.

The BLM has scheduled two public scoping meetings:

Wednesday, March 18, 2015

3:30 p.m.–8:30 p.m., Temecula Conference Center, 41000 Main Street, Temecula, CA 92590.

Saturday, March 21, 2015

12:00 p.m.–4:00 p.m., Ocotillo Wells SVRA Visitor Center, Discovery Center Building, 5172 Highway 78, Borrego Springs, CA 92004.

The date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *www.blm.gov/ca/st/en/fo/elcentro.html.* In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Ocotillo Wells SVRA RAMP and General Plan Update by any of the following methods:

- Web site: *www.blm.gov/ca/st/en/fo/elcentro.html.*
- Email: *BLM_CA_Ocotillo_Wells_RAMP@blm.gov.*
- Fax: 760–337–4490
- Mail: Attn: Carrie Simmons, BLM El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.

Documents pertinent to this proposal may be examined at the El Centro Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Carrie Simmons; telephone 760–337–4437; address 1661 S. 4th Street, El Centro, CA 92243; or email *BLM_CA_Ocotillo_Wells_RAMP@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 the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM intends to prepare a CDCA Plan Amendment with an associated EIS, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The Ocotillo Wells SVRA is located in San Diego and Imperial counties, generally north of State Route 78, west of State Route 86, and bounded by Anza-Borrego Desert State Park on the north and west. The BLM portion of this project occurs solely within Imperial County and constitutes approximately 21,600 acres within the 85,000 acre Ocotillo Wells SVRA.

The BLM lands within the Ocotillo Wells SVRA are managed by California State Parks OHMVR Division through a Memorandum of Understanding (MOU). A joint RAMP/General Plan would improve the efficiency and effectiveness of resource and recreation management at Ocotillo Wells SVRA. Primary recreation activities at Ocotillo Wells SVRA include off-highway vehicle (OHV) use, camping, education and interpretation, and special events. The California State Parks General Plan revision is needed to provide updated planning and management policies, goals, and guidelines for the entire SVRA including SVRA expansions since the 1982 General Plan was adopted. The BLM decisions include whether or not to amend the CDCA plan to change the land use designation of some BLM parcels in the SVRA. This may include making changes in OHV area designations in accordance with 43 CFR 8342. The CDCA Plan Amendment/EIS will consider a proposal to designate the Ocotillo Wells SVRA as a Special Recreation Management Area (SRMA). SRMA designations recognize public lands where recreation is the predominant land use. In response to a California State Parks Recreation and Public Purposes Act (R&PP Act) application, the BLM will also identify lands within the planning area that would be available for leasing or patent to the State of California through the R&PP Act or other land transfer or disposal processes. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the CDCA Plan Amendment area have been identified by BLM and OHMVR as well as other Federal, State, and local agencies and stakeholders. Issues include wildlife and botany; cultural resources and paleontology; water resources; noise; land use; geology and soils; mineral resources including geothermal; socioeconomics; hazardous materials and solid waste; public health; visual resources; air quality; recreation; and traffic and transportation.

In addition, the BLM anticipates the following planning issues: (1) How best to address conflicts between recreational users, and (2) how to balance opportunities for the different kinds of recreation uses.

A preliminary list of the potential planning criteria that will be used to help guide and define the scope of the Plan Amendment includes:

1. Compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;

2. To the extent consistent with Federal law, the lands will be managed consistently with the California Department of Parks and Recreation OHMVR Division's Strategic Plan and the Off-Highway Motorized Vehicle Recreation Act, which include policies for managing both environmental resources and recreational activities in a sustainable manner;

3. The Plan Amendment/RAMP/General Plan will recognize valid existing rights;

4. Public involvement and participation will be an integral part of the planning process; and

5. Where existing planning decisions are still valid, those decisions may remain unchanged and be incorporated into the new Plan Amendment/RAMP/General Plan.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources. The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

The BLM will evaluate identified issues to be addressed, and will place them into one of three categories:

1. Issues to be resolved in the CDCA Plan Amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this CDCA Plan Amendment.

The BLM will provide an explanation in the Scoping Report or the EIS/EIR as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed by the project. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The BLM will use an interdisciplinary approach to develop the CDCA Plan Amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Planning, minerals and geology, outdoor recreation, archaeology, paleontology, wildlife, botany, lands and realty, hydrology, soils, sociology and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2015–02551 Filed 2–6–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO923000 L14300000.ET0000; COC–28675]

Notice of Proposed Withdrawal Modification of Public Land Order No. 184 and Opportunity for a Public Meeting, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to modify, on behalf of the Bureau of Land Management (BLM), Public Land Order (PLO) No. 184 by opening the public land to all forms of appropriation and entry under the public land laws to provide for the disposal of small, fragmented, isolated parcels that are largely intermingled within residential areas. The public lands will remain closed to location and entry under the United States mining and mineral leasing laws. This notice gives the public an opportunity to comment on the application and to request a public meeting.

DATES: Comments and public meeting requests must be received on or before May 11, 2015.

ADDRESSES: Comments and meeting requests should be sent to the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Chief, Branch of Lands and Realty, 303–239–3882. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed an application requesting the Assistant Secretary for Land and Minerals Management to modify PLO No. 184, by opening the following described public lands to all forms of appropriation and entry under the public land laws, but not to the United States mining and mineral leasing laws, subject to valid existing rights, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

T. 9 S., R. 79 W.,
secs. 18, 19, and 30, all public land.
T. 9 S., R. 80 W.,
sec. 12, all public land;
sec. 13, lots 30 and 31, and all remaining public land;
sec. 24, lot 13, and all remaining public land.
The areas described aggregate approximately 219 acres in Lake County.

The Assistant Secretary for Land and Minerals Management approved the BLM's petition/application; therefore, the petition constitutes a withdrawal modification proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the withdrawal modification is to allow the BLM the ability to dispose of small, fragmented, isolated parcels that are largely intermingled within residential areas. The lands will remain closed to location and entry under the United States mining and mineral leasing laws.

The use of a right-of-way, interagency or cooperative management agreement would not allow for title transfer in cases where it is determined to be in the public interest to dispose of highly-fragmented, isolated parcels.

There are no suitable alternative sites available.

Water will not be needed to fulfill the purpose of the requested withdrawal modification.

Records relating to the application may be examined by contacting Andy Senti, BLM Colorado State Office at the above address or by telephone at 303–239–3713.

For the period until May 11, 2015, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal modification application may present their views in writing to the BLM Colorado State Office at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Colorado State Office, at the address above, during regular business hours, 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or any other personal identifying information in your comments, 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.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal modification. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal modification must submit a written request to the BLM Colorado State Director no later than May 11, 2015. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and through local media, newspapers and the BLM Colorado Web site at: *www.blm.gov/co,* at least 30 days before the scheduled date of the meeting.

Licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature or the disposal of the mineral or vegetative resources other than under the mining and mineral leasing laws may be permitted if the use is consistent with the management objectives for the area.

This withdrawal modification application will be processed in accordance with the regulations set forth in 43 CFR 2310.3, *et seq.*

Ruth Welch,

Colorado State Director.

[FR Doc. 2015–02568 Filed 2–6–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000L12100000.MD000015XL 1109AF]

Second Call for Nominations for the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for the Desert Advisory Council (DAC). Council members provide advice and recommendations to the BLM on the management of public lands in Southern California.

DATES: All nominations must be received no later than March 11, 2015.

ADDRESSES: Nominations should be sent to Teresa Raml, District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553–9046, (951) 697–5217. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of over 10 million acres of public land in Southern California. The Council meets in formal session three to four times each year in various locations throughout the BLM California Desert District. Council members serve without compensation other than travel expenses. Members serve three-year terms and may reapply to be nominated for reappointment to an additional three-year term.

Section 309 of the Federal Land Policy and Management Act directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM-administered lands. The Secretary also selects Council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the Council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and the BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes more than 10 million acres of public land in the California Desert Conservation Area of Mono, Inyo, Kern, Los Angeles, San Bernardino, Riverside, and Imperial counties, as well as 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, and Los Angeles counties (known as the South Coast).

Public notice begins with the publication date of this notice and nominations will be accepted for 30 days from the date of this notice. The seven positions to be filled include one elected official, one representative of non-renewable resources groups or organizations, one representative of recreation groups or organizations, one representative of wildlife groups or organizations, and two representatives of the public-at-large. These six positions became vacant on December 7, 2014. The seventh position is a representative of the renewable energy industry. This position became vacant on January 9, 2015. The BLM was notified of this pending vacancy during the initial nomination period. The BLM is issuing a second call for nominations to notify the public of this vacant position and to reopen the nomination period for those positions listed in the initial call for nominations. If you have already submitted your DAC nomination materials for 2015, you will not need to resubmit.

Any group or individual may nominate a qualified person, based upon education, training, and knowledge of the BLM, the California Desert, and the issues involving BLM-administered public lands throughout Southern California. Qualified individuals may also nominate themselves.

The nomination form may be found on the Desert Advisory Council Web

page: *http://www.blm.gov/ca/st/en/info/rac/dac.html.* The following must accompany the form for all nominations:

- Letters of reference from represented interests or organizations.
- A completed background information nomination form.
- Any other information that addresses the nominee's qualifications.

Nominees unable to download the nomination form may contact the BLM California Desert District External Affairs staff at (951) 697–5217 to request a copy. Advisory Council members are appointed by the Secretary of the Interior. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Authority: 43 CFR 1784.4–1.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2015–02550 Filed 2–6–15; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–895]

Certain Multiple Mode Outdoor Grills and Parts Thereof; Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlawful importation, sale for importation, and sale after importation by respondents The Brinkmann Corporation (''Brinkmann'') of Dallas, Texas; Outdoor Leisure Products, Inc. (''OLP'') of Neosho, Missouri; Dongguan Kingsun Enterprises Co., Ltd. (''Kingsun'') of Dongguan City, China; Academy, Ltd. (''Academy'') of Katy, Texas; and Ningbo Huige Outdoor Products Co., Ltd. (''Huige'') of Zhejiang Province, China, of certain multiple mode outdoor grills and parts thereof by reason of infringement of one or more claims of U.S. Patent No. 8,381,712 (''the '712 patent''). The Commission also found defaulted respondent Keesung Manufacturing Co., Ltd. (''Keesung'') of Guangzhou, China in violation pursuant to Section 337(g)(1). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 26, 2013, based on a complaint filed on behalf of A&J Manufacturing, LLC of St. Simons, Georgia and A&J Manufacturing, Inc. of Green Cove Springs, Florida (collectively, ''A&J'' or ''Complainants''). 78 *Fed. Reg.* 59373 (Sept. 26, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain multiple mode outdoor grills and parts thereof by reason of infringement of certain claims of the '712 patent, the claim of U.S. Patent No. D660,646, and the claim of U.S. Patent No. D662,773. The Commission's notice of investigation, as amended, named numerous respondents including Brinkmann, OLP, Kingsun, Academy, Huige, Char-Broil, LLC (''Char-Broil''), and Fudeer Electric Appliance Co., Ltd. (''Fudeer''). The Office of Unfair Import Investigations (''OUII'') is also a party to this investigation.

On January 9, 2014, the Commission determined not to review an initial determination finding respondent Keesung in default. Order No. 16 (Dec. 20, 2013).

On June 24, 2014, the Commission affirmed-in-part and vacated-in-part an initial determination granting-in-part a motion for summary determination of non-infringement filed by Char-Broil, Fudeer, OLP, Kingsun, Tractor Supply Co., and Chant Kitchen Equipment (HK) Ltd. The Commission found that Complainants admit that the following redesigned grills do not infringe the '712 patent: (1) Chant/Tractor Supply's New Model 1046761; (2) Rankam's Member's Mark Grill, Model No. GR2071001–MM (Ver. 2) and (3) Rankam's Smoke Canyon Grill, Model No. GR2034205–SC (Ver. 2). Comm'n Op. at 1 (Jun. 24, 2014). The Commission found the other redesigned products at issue were within the scope of the investigation. *Id.* The Commission adopted the ALJ's construction of the ''openable [] cover'' limitations of claims 1 and 17 on modified grounds. *Id.* The Commission affirmed the ALJ's finding of non-infringement of claims 1 and 17 for the Char-Broil Oklahoma Joe Longhorn Model 12210767 Grill and adopted the ALJ's findings that the redesigned grills do not infringe claims 1 and 17 on modified grounds. *Id.* The Commission also found that the ''openable [] cover means'' limitations of claim 10 are means-plus-function limitations and directed the ALJ to make findings consistent with its means-plus-function interpretation. *Id.* at 2.

On July 31, 2014, the Commission determined not to review an initial determination granting a motion for partial termination of the investigation based on withdrawal of allegations in the complaint concerning the two asserted design patents. *See* Order No. 50 (Jul. 14, 2014).

On September 26, 2014, the ALJ issued the final Initial Determination (''ID''), finding a violation of section 337 as to respondents Brinkmann, OLP, Kingsun, Academy, and Huige based upon his determinations: (i) That certain, but not all, accused products infringe at least one claim of the '712 patent; (ii) that the domestic industry requirement has been satisfied with respect to the '712 patent; and (iii) that the asserted claims of the '712 patent have not been shown by clear and convincing evidence to be invalid. On October 9, 2014, the ALJ issued his Recommended Determination on remedy and bonding.

On October 14, 2014, A&J filed a petition for review of certain aspects of the final ID's findings concerning claim construction and infringement. On the same day, Brinkmann, OLP, and Academy together sought review of certain aspects of the final ID's findings regarding validity. OLP separately challenged certain aspects of the final ID's findings regarding claim construction and infringement. Academy and Huige petitioned for review of the ID's determination (Order

No. 47) to exclude evidence and testimony concerning their redesigns, and the ALJ's refusal to make a determination as to whether those redesigns infringe the asserted claims of the '712 patent. Responses to the petitions were filed on October 22, 2014.

On December 2, 2014, the Commission determined to review the final ID in part and requested briefing on issues it determined to review, and on remedy, the public interest, and bonding. 79 *Fed. Reg.* 72700–02 (Dec. 8, 2014). Specifically, with respect to the '712 patent, the Commission determined to review: (1) The ID's construction of the ''exhaust'' and ''exhaust means'' limitations in claims 10 and 16, and related findings regarding infringement of claims 10–16; (2) the ID's findings regarding infringement of claims 1, 4, and 6–8 by the accused Dyna-Glo grills imported by respondent GHP Group, Incorporated; (3) the ID's findings regarding infringement of claims 1, 2, 4–8, 10, 11, and 13–15 by the accused Char-Broil Model No. 463724512 grill; and (4) the ID's finding that the '712 patent was not shown to be invalid.

On December 12, 2014, A&J and OUII each filed initial written submissions regarding issues on review, remedy, the public interest, and bonding. On the same day, the respondents jointly filed their initial written submission regarding issues on review, remedy, the public interest, and bonding. Responses to the initial written submissions were filed on December 19, 2014.

Having examined the record of this investigation, including the parties' submissions and responses thereto, the Commission has determined that 35 U.S.C. 112, ¶ 6 applies to the ''exhaust means'' and ''exhaust'' limitations in claims 10 and 16. Based on the Commission's interpretation of claims 10–16, the Commission has determined (i) that the accused Brinkmann 810–3821 grill infringes claims 10, 11, 13, 15, and 16; (ii) that the accused Academy/Huige grills infringe claims 10–13, 15, and 16; and (iii) that the other accused Brinkmann grills, the OLP/Kingsun redesigned grills, the OLP/Kingsun original grills, and the Char-Broil/Fudeer grills do not infringe any of claims 10–16 of the '712 patent. The Commission vacates the ID's finding that the DGB730SNB–D grill does not infringe claims 1, 4, and 6–8 of the '712 patent. The Commission also reverses the ID's finding that the DGJ810CSB–D grill does not infringe claims 1, 4, and 6–8 of the '712 patent. With respect to the accused Char-Broil/Fudeer grill, Model No. 463724512, the Commission has determined to affirm, with modified reasoning, the ID's finding that the grill does not infringe any asserted claims of the '712 patent. The Commission has further determined to affirm, with modified reasoning, the ID's finding that the asserted claims of the '712 patent have not been proven invalid as obvious. Accordingly, the Commission has found a violation of section 337 as to respondents Brinkmann, OLP, Kingsun, Academy, and Huige, and defaulted respondent Keesung.

The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of covered multiple mode outdoor grills and parts thereof manufactured by, for, or on behalf of Brinkmann, OLP, Kingsun, Academy, Huige, and Keesung, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns. The Commission has also determined to issue cease and desist orders prohibiting Brinkmann, OLP, and Academy from further importing, selling, and distributing articles that infringe certain claims of the '712 patent in the United States. The orders include the following exemptions: (1) Conduct licensed or authorized by the owner of the '712 patent; (2) conduct related to covered products imported by or for the United States; and (3) the importation, distribution, and sale of parts for use in the maintenance, service, or repair of covered products purchased prior to the effective date of the orders. The Commission has carefully considered the submissions of the parties and has determined that the public interest factors enumerated in section 337(d)(1), (f)(1), and (g)(1) do not preclude issuance of its orders.

Finally, the Commission has determined that excluded multiple mode outdoor grills and parts thereof may be imported and sold in the United States during the period of Presidential review (19 U.S.C. 1337(j)) with the posting of a bond of 100 percent of the entered value for all covered articles manufactured by, for, or on behalf of Keesung, and the posting of a bond of zero percent for all covered articles manufactured by, for, or on behalf of Brinkmann, OLP, Kingsun, Academy, and Huige. The Commission's Orders and Opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: February 3, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–02516 Filed 2–6–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Semi-Annual Progress Report for Grantees From the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) 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.

DATES: Comments are encouraged and will be accepted for 60 days until April 10, 2015.

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 Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-Annual Progress Report for Grantees from the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0006. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 200 grantees from the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) which recognizes that sexual assault, domestic violence, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial scrutiny and management of offender behavior.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 200 respondents (Arrest Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An Arrest Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

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: February 4, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–02560 Filed 2–6–15; 8:45 am]

BILLING CODE 4410–FX–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/.* This information may also be requested by telephoning, 703/292–8687.

Dated: February 4, 2015.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2015–02577 Filed 2–6–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304; NRC–2015–0024]

ZionSolutions, LLC, Zion Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 27, 2014, request from Zion*Solutions,* LLC (ZS), for Zion Nuclear Power Station (ZNPS), Units 1 and 2 (Docket Nos. 50–295 and 50–304), from the requirement to investigate and report to the NRC when ZS does not receive notification or receipt of a shipment, or part of a shipment, of low-level radioactive waste within 20 days after transfer. Zion*Solutions* is currently in the process of decommissioning the ZNPS site. Inherent to the decommissioning process, large volumes of slightly contaminated debris are generated and require disposal at distant locations. Historical data from the experiences of other decommissioning reactor sites indicates that rail transportation time to waste disposal facilities frequently exceeded the 20-day reporting requirement. The licensee requested that the time period for it to receive acknowledgement that the shipment has been received by the intended recipient be extended from 20 to 45 days to avoid an excessive administrative burden because of required investigations and reporting arising from rail shipments that frequently take more than 20 days to reach their destination.

ADDRESSES: Please refer to Docket ID NRC–2015–0024 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0024. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John B. Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017, email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ZNPS facility was shut down on February 21, 1997, and is currently in a permanently shut-down and defueled condition. Zion*Solutions* is the current holder of Facility Operating License Nos. DPR–39 and DPR–48, for ZNPS Units 1 and 2. The license, pursuant to the Atomic Energy Act of 1954 and 10 CFR part 50, allows ZS to possess but not operate the defueled ZNPS facility. Zion*Solutions* is currently in the process of decommissioning the ZNPS.

II. Request/Action

By letter dated October 27, 2014, (ADAMS Accession Number ML14309A197) ZS requested an exemption from Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR), appendix G, ''Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests,'' Section III. E. for ZNPS. Specifically, ZS is requesting that the time period for ZS to receive acknowledgement that the shipment has been received by the intended recipient be extended from 20 to 45 days for rail shipments from ZNPS. The NRC's regulations in 10 CFR 20.2301 allow the Commission to grant exemptions if it determines the exemption would be lawful and would not result in undue hazard to life or property. Inherent to the decommissioning process, large volumes of slightly contaminated debris are generated and require disposal. The licensee transports low-level radioactive waste from ZNPS Units 1 and 2 to distant locations such as a waste disposal facility operated by EnergySolutions in Clive, Utah, and waste processors in Texas. Experience with waste shipments from ZNPS and at other decommissioning reactor sites indicates that rail transportation time to waste disposal facilities frequently exceeds the 20-day reporting requirement.

III. Discussion

The Exemption Is Authorized by Law

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act of 1954, as amended (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption and the NRC is authorized to grant the exemption by law.

The Exemption Would Not Result in Undue Hazard to Life or Property

The NRC finds that the underlying purpose of 10 CFR part 20, Appendix G, Section III.E is to require licensees to investigate, report, and trace radioactive shipments that have not reached their destination, as scheduled, for unknown reasons. Data from San Onofre Nuclear Generating Station found that rail shipments took over 16 days on average, and on occasion, took up to 57 days. The NRC acknowledges that, based on the history of low-level radioactive waste shipments from the San Onofre Nuclear Generating Station and Humboldt Bay Power Plant sites, the need to investigate and report on shipments that take longer than 20 days could result in an excessive administrative burden on the licensee. For rail shipments, ZS will require electronic data tracking system interchange, or similar tracking systems that allow monitoring the progress of the shipments by the rail carrier on a daily basis. Because of the oversight and monitoring of radioactive waste shipments throughout the entire journey from ZNPS to the disposal site, it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or ZS. Furthermore, by extending the elapsed time for receipt acknowledgment to 45 days before requiring investigations and reporting, a reasonable upper limit on shipment duration (based on historical analysis) is still maintained if a breakdown of normal tracking systems were to occur. Consequently, the NRC finds that there is no hazard to life or property by extending the investigation and reporting time for low-level radioactive waste shipments from 20 to 45 days for rail shipments. The NRC also finds that the underlying purpose of 10 CFR part 20, Appendix G, Section III.E will be met.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 20.2301, the exemption is authorized by law and will not result in undue hazard to life or property. Therefore, the NRC hereby grants Zion*Solutions,* LLC an exemption from 10 CFR part 20, Appendix G. Section III.E to extend the requirement to investigate, trace, and report on rail shipments of low-level radioactive waste intended for disposal at a licensed land disposal facility that have not been received at the disposal facility within 20 days to 45 days after transfer.

Dated at Rockville, Maryland, this 30th day of January 2015.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–02606 Filed 2–6–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0256]

Aquatic Environmental Studies for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment and extension of comment period.

SUMMARY: On December 11, 2014, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft regulatory guide (DG), DG–4023, ''Aquatic Environmental Studies for Nuclear Power Stations.'' The public

comment period was originally scheduled to close on February 9, 2015. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on December 11, 2014 (79 FR 73646) is extended. Comments should be filed no later than March 11, 2015. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0256. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12 H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ryan Whited, Office of New Reactors, telephone: 301–415–1154, email: *Ryan.Whited@nrc.gov* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–251–7455, email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0256 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0256.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DG is electronically available in ADAMS under Accession No. ML13186A085.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0256 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

On December 11, 2014, the NRC solicited comments on draft regulatory guide, DG–4023, ''Aquatic Environmental Studies for Nuclear Power Stations.'' It is a proposed new regulatory guide, and it is temporarily identified by its task number, DG–4023. The draft guide provides technical guidance for aquatic environmental studies and analyses supporting decisions related to nuclear power stations by the NRC. For purposes of DG–4023, the term ''aquatic'' encompasses freshwater, estuarine, and marine environments. The draft guide addresses wetlands containing submerged aquatic vegetation but does not address wetlands also containing emergent vegetation. Instead, NRC's Regulatory Guide 4.11, ''Terrestrial Environmental Studies for Nuclear Power Stations,'' addresses such wetland features, along with the terrestrial environment. Although the NRC is issuing separate regulatory guides addressing terrestrial and aquatic environmental studies, it recognizes that aquatic and terrestrial ecological issues often overlap and are often interrelated.

The public comment period was originally scheduled to close on February 9, 2015. The NRC has decided to extend the public comment period on this document until March 11, 2015, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 4th day of February, 2015.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2015–02571 Filed 2–6–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: 9, 16, 23, March 2, 9, 16, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 9, 2015

There are no meetings scheduled for the week of February 9, 2015.

Week of February 16, 2015—Tentative

Wednesday, February 18, 2015

9:30 a.m. Briefing on NRC International Activities (Closed—Ex.9)

Week of February 23, 2015—Tentative

There are no meetings scheduled for the week of February 23, 2015.

Week of March 2, 2015—Tentative

Thursday, March 5, 2015

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Edwin Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 9, 2015—Tentative

There are no meetings scheduled for the week of March 9, 2015.

Week of March 16, 2015—Tentative

There are no meetings scheduled for the week of March 16, 2015.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: February 5, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–02715 Filed 2–5–15; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2015–0011]

Florida Power & Light Company; Turkey Point Nuclear Generating Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: 10 CFR 2.206 request; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated July 18, 2014, as supplemented, Mr. Thomas Saporito (the petitioner) requested that the NRC take enforcement action with regard to Florida Power & Light Company (FPL or the licensee). The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2015–0011 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0011. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: By petition dated July 18, 2014 (ADAMS Accession No. ML14202A520), as supplemented by email (ADAMS Accession No. ML14202A521) and the petitioner's address to the Petition Review Board on September 3, 2014 (ADAMS Accession No. ML14266A123), the petitioner requested that the NRC take enforcement action against FPL due to increased ultimate heat sink (UHS) temperatures at Turkey Point Nuclear Generating Units 3 and 4 (Turkey Point). The petition states concern with the impact of the higher UHS temperatures on the environment and the licensee's capability to mitigate accidents at the higher temperatures.

The petitioner requested that the NRC take escalated enforcement action against FPL, specifically to issue FPL a violation and civil penalty, and to issue FPL a confirmatory order to maintain Turkey Point in a cold shutdown condition until FPL completes independent assessments of the UHS temperature increase and its impacts on safety-related equipment. As the basis for this request, the petitioner stated that operation of Turkey Point at a UHS temperature greater than 100 degrees Fahrenheit will significantly jeopardize public health and safety and the environment.

The request is being treated pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC reviewed the petition, its supplements, and the transcripts from the meeting on September 3, 2014, and referred the request to the Director of the Office of Nuclear Reactor Regulation. The Director determined that the petitioner's request that the NRC take enforcement action until the licensee completes an independent root cause assessment for the rise in UHS temperature met the criteria for review under the 10 CFR 2.206 process. The Director determined that the other requests in the petition did not meet the criteria for review under the 10 CFR 2.206 process because they concern issues that have already been the subject of NRC staff review and evaluation and have been resolved. The NRC will take appropriate action on this petition within a reasonable time.

Dated at Rockville, Maryland, this 30th day of January, 2015.

For the Nuclear Regulatory Commission.

Jennifer L. Uhle,

Deputy Director for Reactor Safety Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–02608 Filed 2–6–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–26 and CP2015–35; Order No. 2345]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Priority Mail Contract 107 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 11, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 107 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–26 and CP2015–35 to consider the Request pertaining to the proposed Priority Mail Contract 107 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than February 11, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–26 and CP2015–35 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than February 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–02557 Filed 2–6–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 107 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 30, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–29 and CP2015–38; Order No. 2344]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Priority Mail Contract 110 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 10, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 110 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–29 and CP2015–38 to consider the Request pertaining to the proposed Priority Mail Contract 110 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than February 10, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–29 and CP2015–38 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than February 10, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–02480 Filed 2–6–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 110 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 30, 2015 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31444; 812–14409]

Victory Capital Management Inc., et al.; Notice of Application

February 3, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts (''UITs'') outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: The Victory Portfolios (''Victory Trust''), Victory Capital Management Inc. (''VCM''), Victory Capital Advisers, Inc. (''VCA''), Compass EMP Funds Trust (''Compass Trust'' and, together with the Victory Trust, the ''Trusts'') and Quasar Distributors, LLC (''Quasar'').

DATES: *Filing Dates:* The application was filed on December 31, 2014, and amended on January 26, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 2, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549; Applicants: James G. Silk, Willkie Farr & Gallagher LLP, 1875 K Street NW., Washington, DC 20006 and Jay G. Baris, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is a Delaware statutory trust and is registered under the Act as an open-end management investment company with multiple series. Each series for which a Trust seeks the requested order will operate as an exchange traded fund (''ETF'').

2. VCM will be the investment adviser to the series of the Trusts identified and described in Appendix A to the application (''Initial Funds''). Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (as defined below) (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. Each Trust has entered into a distribution agreement with one or more distributors. Each distributor for a Fund will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter (''Distributor'') for one or more of the Funds. No Distributor will be affiliated with any national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange''). The Distributor for each Fund will comply with the terms and conditions of the requested order. VCA, a registered broker-dealer under the Exchange Act, is a Delaware corporation and acts as Distributor for the Funds under the Victory Trust. Quasar, a registered broker-dealer under the Exchange Act, is a Delaware limited liability company and acts as the Distributor for the Funds under the Compass Trust.

4. Applicants request that the order apply to the Initial Funds and any additional series of the Trusts, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Funds, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by VCM or an entity controlling, controlled by, or under common control with VCM (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such

Foreign Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Fund may also invest up to 20% of its assets in a broad variety of other instruments including, but not limited to, repurchase agreements, reverse repurchase agreements, government securities, cash and cash equivalents, commodities, options, futures contracts, currency futures contracts, options on futures contracts, swaps, options on swaps, forward contracts or other derivatives or financial instruments (including, but not limited to, credit-linked notes, commodity-linked notes, forward commitment transactions, foreign currency forwards, indexed and inverse floating rate securities, floating and variable rate instruments, convertible instruments, preferred stocks, rights and warrants), real estate investment trusts, shares of other ETFs, UITs and exchange-traded notes, and shares of money market mutual funds or other investment companies or pooled investment vehicles, foreign currency, mortgage-backed securities, asset-backed securities, municipal debt securities, when-issued securities and delayed delivery transactions, including securities and other instruments not included in its Underlying Index but which the Fund's Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. Each Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (as defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trusts or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trusts or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Self-Indexing Fund will post on its Web site, on each day the Fund is open, including any day when it satisfies redemption requests as required by section 22(e) of the Act (a ''Business Day''), before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the applicable Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

12. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. The Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, VCM will adopt policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the VCM or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit [10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of Component Securities, the inclusion or exclusion of specific Component Securities, or methodology for the calculation or the return of Component Securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[11]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [15] will be excluded from the Deposit Instruments and the Redemption Instruments; [16] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will

[8] *See, e.g.*, Rule 17j–1 under the Act and section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

[11] *See, e.g.*, Guggennheim Funds Investment Advisors, LLC, Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order); Sigman Investment Advisors, LLC, Investment Company Act Release Nos. 30559 (June 14, 2013) (notice) and 30597 (July 10, 2013) (order); Transparent Value Trust, et al., Investment Company Act Release Nos. 30558 (June 14, 2013) (notice) and 30596 (July 10, 2013) (order); and Horizons ETF Trust, et al., Investment Company Act Release Nos. 30803 (November 21, 2013) (notice) and 30833 (December 17, 2013) (order).

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.*, 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.*, a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Exchange on which Shares are primarily listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trusts nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[22]

[22] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and UITs that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[23] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales

any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[23] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[24]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of a Trust or such Funds, may be deemed affiliated persons of that Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[25] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[26] Applicants believe that any

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[25] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[26] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a

proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. None of the Trusts or any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Fund of Funds Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any

Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–02488 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74195; File No. SR–BX–2015–007]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add New Section 20, Exchange Sharing of Participant-Designated Risk Settings, to Chapter VI, Trading Systems

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to add new Section 20, Exchange Sharing of Participant-Designated Risk Settings, to Chapter VI, Trading Systems, of the Exchange's Options rules to authorize the Exchange to share any Participant-designated risk settings in the Exchange's Trading System with the Clearing Participant that clears transactions on behalf of the Participant.[3]

The text of the proposed rule change is below; proposed new language is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Participant'' or ''Options Participant'' is a firm or organization that is registered with the Exchange pursuant to Chapter II of the BX Rules for purposes of participating in options trading on BX Options as a ''BX Options Order Entry Firm'' or ''BX Options Market Maker''. The term ''BX Options Market Maker'' or ''Options Market Maker'' means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of the BX Rules. The terms ''BX Options Order Entry Firm'' or ''Order Entry Firm'' or ''OEF'' mean those Options Participants representing as agent Customer Orders on BX Options and those non-Market Maker Participants conducting proprietary trading. A ''Clearing Participant'' means a Participant that is self-clearing or a Participant that clears BX Options Transactions for other Participants of BX Options. The term ''Trading System'' or ''System'' means the automated trading system used by BX Options for the trading of options contracts. *See* Chapter I, Section 1, Definitions, of the BX Rules.

italicized; proposed deletions are in brackets.

* * * * *

NASDAQ OMX BX Rules

Options Rules

* * * * *

Chapter VI, Trading Systems

Sec. 1–19. No change.

Sec. 20 Exchange Sharing of Participant-Designated Risk Settings.

The Exchange may share any Participant-designated risk settings in the Trading System with the Clearing Participant that clears transactions on behalf of the Participant.

* * * * *

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 Section 20, Exchange Sharing of Participant-Designated Risk Settings, in Chapter VI, Trading Systems, of the BX Rules in order to authorize the Exchange to share any Participant-designated risk settings in Exchange's Trading System with the Clearing Participant that clears transactions on behalf of the Participant. Pursuant to Chapter II, Participation, Section 2, Requirements for Options Participation, of the BX Rules, Options Participants must be Options Clearing Participants or establish a clearing arrangement with a Clearing Participant. Every Clearing Participant is responsible for the clearance of BX Options Transactions [4] of each Options Participant that gives up such Clearing Participant's name pursuant to a letter of authorization, letter of guarantee or other authorization (''Letter of Guarantee'') given by such Clearing Participant to such Options Participant, which authorization must be submitted to BX.[5] Further, no Options Participant may make any transactions on BX Options unless a Letter of Guarantee providing that the issuing Clearing Participant accepts financial responsibilities for all BX Options Transactions made by the guaranteed Participant has been issued for such Participant by a Clearing Participant and filed with BX Regulation.[6]

Thus, while not all Participants are Clearing Participants, all Participants require a Clearing Participant's consent to clear transactions on their behalf in order to conduct business on the Exchange. Each Participant that transacts through a Clearing Participant on the Exchange executes a Letter of Guarantee which codifies the relationship between the Participant and the Clearing Participant and provides the Exchange with notice of which Clearing Participants have relationships with which Participants. The Clearing Member that guarantees the Participants transactions on the Exchange has a financial interest in understanding the risk tolerance of the Participant. The proposal would provide the Exchange with authority to directly provide Clearing Participants with information that may otherwise be available to such Clearing Participants by virtue of their relationship with the respective Participants.

At this time, the risk settings covered by this proposal are set forth in Chapter VI, Trading Systems, Section 19, Risk Monitor Mechanism.[7] The Exchange may adopt additional rules providing for Participant-designated risk settings other than those provided in Chapter VI, Section 19 that could be shared with a Participant's Clearing Participant under the proposal, and the Exchange would announce these additional risk settings by issuing an Options Trader Alert.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change will allow the Exchange to directly provide a Participant's designated risk settings to the Clearing Participant that clears trades on behalf of the Participant. Because a Clearing Participant that executes a clearing Letter of Guarantee on behalf of a Participant guarantees all transactions of that Participant, and therefore bears the risk associated with those transactions, it is appropriate for the Clearing Participant to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system. The proposal will permit Clearing Participants who have a financial interest in the risk settings of Participants with whom the Clearing Participant has entered into a clearing Letter of Guarantee to better monitor and manage the potential risks assumed by Clearing Participants, thereby providing Clearing Participants with greater control and flexibility over setting their own risk tolerance and exposure and aiding Clearing Participants in complying with the Act. To the extent a Clearing Participant might reasonably require a Participant to provide access to its risk setting as a prerequisite to continuing to clear trades on the Participant's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on Participants and ensures that Clearing Participants are receiving information that is up to date and conforms to the settings active in the Exchange's trading system.

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

[4] The term ''BX Options'' means the BX Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act. The term ''BX Options Transaction'' means a transaction involving an options contract that is effected on or through BX Options or its facilities or systems.

[5] *See* Chapter VI, BX Trading Systems, Section 15, Submission for Clearance, Subsection (a).

[6] *See* Chapter VII, Section 8, Letters of Guarantee.

[7] *See* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030). The Mechanism provides protection to participants from the risk of multiple executions across multiple series of an option. Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose market makers, who are required to continuously quote in assigned options, to potentially significant market risk. Participants may establish a specified time period, not to exceed 15 seconds, within which a counting program will count the number of contracts traded in an option by such Participant. When the Participant has traded a certain number of contracts during the specified time period, the Risk Monitor Mechanism will automatically remove such Participant's quotations from the Exchange's disseminated quotation in all series of the particular option.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-Clearing Participants because, unlike Clearing Participants, non-Clearing Participants do not guarantee the execution of a Participant's transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Participants, regardless of size, and would not impose a competitive burden on any Participant. Any Participant that does not wish to share its designated risk settings with its Clearing Participant could avoid sharing such settings by becoming a Clearing Participant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–007 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–BX–2015–007. 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–BX–2015–007, and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02502 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74199; File No. SR–NYSEArca–2014–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Guggenheim Enhanced Short Duration ETF

February 3, 2015.

On October 21, 2014, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reflect certain changes to the description of the Guggenheim Enhanced Short Duration ETF (''Fund''), a series of Claymore Exchange-Traded Fund Trust (''Trust''). On October 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on November 7, 2014.[3] The Commission received one comment on the proposal.[4] On December 10, 2014, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This Order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

I. Description of the Proposal

The Exchange proposes to reflect a change, as described below, to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73512 (Nov. 3, 2014), 79 FR 66442 (''Notice'').

[4] All comments on the proposed rule change, including Amendment No. 1, are available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2014-107/nysearca2014107.shtml.*

[5] *See* Securities Exchange Act Release No. 73810, 79 FR 74783 (Dec. 16, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated February 5, 2015 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

description of the measures that Guggenheim Funds Investment Advisors, LLC (''Adviser'') may use to implement the Fund's investment objective, which is to seek maximum current income, consistent with preservation of capital and daily liquidity.[7] The shares of the Fund (''Shares'') are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600,[8] which governs the listing and trading of Managed Fund Shares. The Shares are offered by the 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.[9] The Exchange represents that the Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

Specifically, the proposal seeks to reflect a change to the Fund's limitation on investments in certain asset-backed securities (''ABS'').[10] According to the Prior Release, the Fund may invest up to 10% of its assets in mortgage-backed securities (''MBS'') or in other ABS.[11] This 10% limitation does not apply to securities issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (''GNMA''), the Federal Housing Administration (''FHA''), the Federal National Mortgage Association (''FNMA''), and the Federal Home Loan Mortgage Corporation (''FHLMC''). Under the proposal, the Fund would be permitted to invest up to 50% of its assets in ABS that are not mortgage-related.[12] This 50% limitation would not apply to securities issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities, such as GNMA, FHA, FNMA, and FHLMC. The Fund would continue to be subject to a 10% limit on investments in MBS that are not issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities. In addition, the Fund's holdings in MBS and ABS would be subject to the respective limitations on the Fund's investments in illiquid assets (as described below) and high yield securities.[13]

The Exchange states that this change to the Fund's investment limitations would allow the Adviser to better achieve the Fund's investment objective to seek maximum current income, consistent with preservation of capital and daily liquidity. In addition, according to the Exchange, the Fund's increased investment in ABS that are not mortgage-related would continue to adhere to the Fund's investment strategy of investing in short duration fixed income securities.[14] The Exchange asserts that, due to the quality of ABS in which the Fund will invest, the Adviser does not expect that the Fund's additional investments in ABS that are not mortgage-related will expose the Fund to additional liquidity risk.

The Exchange states that there is no change to the Fund's investment objective and represents that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. In addition, the Exchange represents that, other than the proposed change described above and in the Notice, all other facts presented and representations made in the Prior Release remain unchanged.

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2014–107 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [17]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written

[7] According to the Prior Release (defined below), the Fund uses a low duration strategy to seek to outperform the 1–3 month Treasury Bill Index, in addition to providing returns in excess of those available in U.S. Treasury bills, government repurchase agreements, and money market funds, while providing preservation of capital and daily liquidity. The Prior Release states that the Fund would hold under normal circumstances a diversified portfolio of fixed income instruments of varying maturities, but that have an average duration of less than 1 year.

[8] *See* Securities Exchange Act Release No. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing and trading on the Exchange of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF) (''Prior Order''). *See also* Securities Exchange Act Release No. 64224 (Apr. 7, 2011), 76 FR 20401 (Apr. 12, 2011) (SR–NYSEArca–2011–11) (''Prior Notice,'' and together with the Prior Order, collectively ''Prior Release'').

[9] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On September 27, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–134551 and 811–21906) (''Registration Statement''). In addition, according to the Exchange, the Trust has obtained certain exemptive relief under the1940 Act. *See* Investment Company Act Release No. 29271, May 18, 2010 (File No. 812–13534).

[10] Under the proposal, the Exchange seeks to reflect certain other conforming or clarifying changes to the description of the measures that the Adviser will utilize to implement the Fund's investment objective. These other proposed changes can be found in more detail in the Notice. *See supra* note 3.

[11] As stated in the Prior Release, the Fund may invest in MBS or other ABS issued or guaranteed by private issuers. The MBS in which the Fund may invest may also include residential MBS, collateralized mortgage obligations, and commercial MBS. In addition, the ABS in which the Fund may invest include collateralized debt obligations.

[12] Specifically, the Exchange notes that such ABS are bonds backed by pools of loans or other receivables and are securitized by a wide variety of assets that are generally broken into three categories: Consumer, commercial, and corporate. The consumer category includes credit card, auto loan, student loan, and timeshare loan ABS. The commercial category includes trade receivables, equipment leases, oil receivables, film receivables, rental cars, aircraft securitizations, ship and container securitizations, whole business securitizations, and diversified payment right securitizations. Corporate ABS include cash flow collateralized loan obligations, collateralized by both middle market and broadly syndicated bank loans. ABS are issued through special purpose vehicles that are bankruptcy remote from the issuer of the collateral. The credit quality of an ABS tranche depends on the performance of the underlying assets and the structure. To protect ABS investors from the possibility that some borrowers could miss payments or even default on their loans, ABS include various forms of credit enhancement.

[13] According to the Prior Release, the Fund may invest no more than 10% of its net assets in high yield securities, which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable quality.

[14] The Fund will target floating rate, shorter maturity, shorter spread duration and other amortizing securities. These securities' maturity and spread duration are consistent with the Fund's investment objective.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

submissions of their views, data, and arguments with respect to the proposal summarized above and information described in the Notice,[18] as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 2, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 16, 2015.

The Commission asks that commenters address the sufficiency and merit of the Exchange's and commenter's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. Does the Notice contain sufficient information about the Fund's proposed investments in ABS for commenters to evaluate the liquidity and transparency of the underlying markets for those ABS?

2. What are commenters' views on the liquidity of the Fund's proposed holdings in ABS? What are commenters' views on pricing transparency in the market for these ABS? Does the pricing transparency vary for investors, market makers, and other market participants? If so, how and why?

3. The Exchange states that, because the preponderance of the Fund's investments in ABS will be in investment-grade instruments, ''the Adviser does not expect that the proposed additional investments in ABS that are not mortgage-related will expose the Fund to additional liquidity risk.'' Do commenters agree? Why or why not?

4. Do commenters believe that the proposal to increase the Fund's holdings in ABS would have any effect on the arbitrage mechanism with respect to the Fund? If so, what effect and why? If not, why not? Do commenters believe that the proposed change in the Fund's investments would have any effect on market pricing of the Fund relative to its net asset value? Why or why not?

5. What are commenters' views on whether the Fund's proposal to increase its ABS holdings would affect the ability of market makers to make markets in the Shares of the Fund?

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–2014–107 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 Numbers SR–NYSEArca–2014–107. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–107 and should be submitted on or before March 2, 2015. Rebuttal comments should be submitted by March 16, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02512 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note 3.

[19] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74190; File No. SR–NASDAQ–2015–006]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the List of Securities Eligible for the Select Symbol Program Under Rule 7018(a)(4)

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to modify the list of securities eligible for the Select Symbol program under Rule 7018(a)(4).

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.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

[20] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to replace the security of a company that is eligible for reduced fees under the Select Symbol program under Rule 7018(a)(4). NASDAQ recently adopted the Select Symbol program,[3] which provides lower execution fees for a select group of securities where access fees may be discouraging the use of public markets. NASDAQ is implementing the program on February 2, 2015. Since filing the program with the Commission, one symbol included in the program no longer exists because the company was acquired by another company. Specifically, Avanir Pharmaceuticals, Inc. (AVNR) was recently acquired by Otsuka Pharmaceutical Co., Ltd., and was suspended from trading on NASDAQ on January 14, 2015. Accordingly, NASDAQ is proposing to replace AVNR with Micron Technology, Inc. (MU), which has similar off-exchange trading and other attributes as other Select Symbol securities in the program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed change furthers these objectives because it replaces a Select Symbol security that no longer exists with another security that has similar attributes. Removal of the Select Symbol security from the program will serve to avoid any investor confusion concerning trading in a security that no longer exists. Adding a replacement security to the list of symbols eligible for the reduced transaction fees of the program ensures that the program has an adequate number of securities on which the Exchange may gather data as part of its analysis of the impact of reducing fees on exchange trading. The Exchange notes that, in selecting the replacement security, it applied the same eligibility criteria as it did in selecting the current symbols eligible for the program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change does not alter the meaning or application of the fees and credits provided under Rule 7018(a)(4), but rather affects only which securities are included in the Select Symbol program. The Select Symbol program is designed to benefit market quality and ultimately, price competition among market participants on the Exchange, and the proposed change to the program furthers those goals. Accordingly, the proposed change does not place any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that NASDAQ may remove AVNR from the list of Select Symbols and add MU immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NASDAQ to remove a company that no longer exists from the Select Symbols immediately, and add another company that meets the same criteria as the other companies in the Select Symbols, enabling NASDAQ to implement the program with a full complement of securities. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[3] Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015) (SR–NASDAQ–2014–128)

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 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.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–006 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–NASDAQ–2015–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–NASDAQ–2015–006, and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02498 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74191; File No. SR–CME–2015–003]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Change to CME Rule 814 To Clarify Certain Operational Details Regarding Current CME Settlement Cycles

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2015, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III, below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization (''DCO''). More specifically, the proposed change would amend the text of current CME Rule 814 to clarify certain operational details regarding current CME settlement cycles.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and currently offers clearing services for many different futures and swaps products. With this filing, CME proposes to make rulebook changes that are limited to its business clearing futures and swaps under the exclusive jurisdiction of the CFTC. More specifically, the proposed changes would amend the text of current CME Rule 814 to clarify certain operational details regarding current CME settlement cycles.

The first proposed change to CME Rule 814 would add further detail regarding the settlement cycle for commodity contracts that are options. The current version of Rule 814 is silent on the settlement cycle for commodity contracts that are options, and so additional language is proposed to ensure that the market is aware that settlement of option value operates differently than settlement for non-option commodity contracts. The proposed rule change is consistent with the current settlement process so no operational changes are needed to implement the proposed rules. The second proposed change is to amend Rule 814 so that it explicitly reflects the fact that the current CME settlement process results in outstanding exposures being settled to zero fair value during each settlement cycle. The third proposed change is to add further clarity regarding settlement finality at the CME clearing house. Lastly, certain terms in the Rule 814 text are being modified in order to provide additional clarity to the marketplace and regulators. As described above, none of these revisions would change any aspect of current operations but, rather, would merely clarify certain operational details of the clearing cycle currently in place in the text of Rule 814.

The proposed rule change that is described in this filing is limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the CFTC. CME has not cleared security based swaps and does not plan to and therefore the proposed rule change does not impact CME's security-based swap clearing business in any way. The proposed rule change will become effective immediately. CME notes that it has also submitted the proposed rule change that is the subject of this filing

to its primary regulator, the CFTC, in CME Submission 14–585.

CME believes the proposed rule change is consistent with the requirements of the Act including Section 17A of the Act.[5] The proposed rule change would amend the text of current CME Rule 814 to clarify certain operational details regarding current CME settlement cycles. The additional clarity in CME's rulebook regarding its settlement cycles should be seen to be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.[6]

Furthermore, the proposed change is limited to CME's futures and swaps clearing businesses, which means it is limited in its effect to products that are under the exclusive jurisdiction of the CFTC. As such, the proposed change is limited to CME's activities as a DCO clearing futures that are not security futures and swaps that are not security-based swaps. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed change is limited in its effect to CME's futures and swaps clearing businesses, the proposed change is properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service. CME believes that the proposal does not significantly affect any securities clearing operations of CME because CME recently filed a proposed rule change that clarified that CME has decided not to clear security-based swaps, except in a very limited set of circumstances.[7] The rule filing reflecting CME's decision not to clear security-based swaps removed any ambiguity concerning CME's ability or intent to perform the functions of a clearing agency with respect to security-based swaps. Therefore, this proposal will not have an effect on any securities clearing operations of CME. As such, the changes are therefore consistent with the requirements of Section 17A of the Act[8] and are properly filed under Section 19(b)(3)(A)[9] and Rule 19b–4(f)(4)(ii)[10] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. CME is making the aforementioned changes simply to clarify current settlement processes; there are no operational changes. Further, the changes are limited to CME's futures and swaps clearing businesses and, as such, do not affect the security-based swap clearing activities of CME in any way and therefore do not impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from 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)[11] of the Act and paragraph (f)(4)(ii) of Rule 19b–4[12] 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.

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–CME–2015–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 21049–1090.

All submissions should refer to File Number SR–CME–2015–003. 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 or 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *See* Securities Exchange Act Release No. 34–73615 (Nov. 17, 2014), 79 FR 69545 (Nov. 21, 2014) (SR–CME–2014–49). The only exception is with regards to Restructuring European Single Name CDS Contracts created following the occurrence of a Restructuring Credit Event in respect of an iTraxx Component Transaction. The clearing of Restructuring European Single Name CDS Contracts will be a necessary byproduct after such time that CME begins clearing iTraxx Contracts.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(4)(ii).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(4)(ii).

All submissions should refer to File Number SR–CME–2015–003 and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill Peterson,

Assistant Secretary.

[FR Doc. 2015–02499 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74202; File No. SR–OCC–2014–813]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice, as Modified by Amendment No. 1, Concerning a Proposed Capital Plan for Raising Additional Capital That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

February 4, 2015.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'' or ''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Act'') notice is hereby given that on December 29, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I and II below, which Items have been prepared by OCC.[3] On January 14, 2015, OCC filed Amendment No. 1 to the advance notice.[4] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in order to set forth a proposed Capital Plan for raising additional capital that would support OCC's function as a systemically important financial market utility and facilitate OCC's compliance with new regulatory requirements applicable to systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

The proposed change sets forth the Capital Plan under which the Stockholder Exchanges would make an additional capital contribution and commit to replenishment capital (''Replenishment Capital'') in circumstances discussed below, and would receive, among other things, the right to receive dividends from OCC. In addition to the additional capital contribution and Replenishment Capital, the main features of the Capital Plan are: (i) A policy establishing OCC's fees at a level that would be sufficient to cover OCC's estimated operating expenses plus a ''Business Risk Buffer'' as described below (''Fee Policy''), (ii) the Refund Policy [sic], and (iii) a policy for calculating the amount of dividends to be paid to the options exchanges owning equity in OCC (''Dividend Policy''). The Capital Plan is proposed to be implemented on or about February 27, 2015, subject to all necessary regulatory approvals.[5]

Purpose of the Proposed Change

The purpose of this proposed change is to implement the Capital Plan, which would significantly increase OCC's capital in connection with its increased responsibilities as a systemically important financial market utility, and which OCC believes would facilitate OCC's compliance with new regulatory requirements applicable to such systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.[6] For purposes of this filing, OCC has used the working assumption that the new requirements contained in the Commission's proposed amendments to Rule 17Ad–22 of the SEC Proposed Rules will be adopted substantially as proposed. The proposed change is intended to ensure OCC's ability to comply with Rule 17Ad–22, specifically paragraph (e)(15) thereof, when the SEC Proposed Rules become effective. In addition, it is intended to address Principle 15 of the Principles for Financial Market Infrastructures published by the Bank for International Settlements and the International Organization of Securities Commissions, which provides, among other things, that a financial market utility should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue to operate as a going concern. The proposal includes an infusion of substantial additional equity capital by the Stockholder Exchanges to be made prior to February 27, 2015, subject to regulatory approval, that when added to retained earnings accumulated by OCC in 2014 will significantly increase OCC's capital levels as compared to historical levels. Additionally, the proposed change includes the Replenishment Capital commitment, which would provide OCC access to additional equity

[13] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] In Items I and II below, OCC states that the purpose of this proposal is in part to facilitate compliance with the SEC Proposed Rules (as defined below) and address Principle 15 of the Principles for Financial Market Infrastructures (''PMFIs''). The Commission notes that the SEC Proposed Rules are pending. The Commission will evaluate the advance notice under the Clearing Supervision Act and the rules currently in force thereunder.

[4] According to OCC, Amendment No. 1 to the SR–OCC–2014–813 (''Filing''): (i) Updates OCC's plan for raising additional capital (''Capital Plan'') in connection with negotiations between OCC and the options exchanges that own equity in OCC (''Stockholder Exchanges'' or ''stockholders'') and that would contribute additional capital under the Capital Plan, (ii) corrects typographical errors in the Filing, and (iii) updates the Term Sheet included as an exhibit to the Filing, which summarizes material features of the Capital Plan.

[5] The material features of the Capital Plan are summarized in the Term Sheet that is included as Exhibit 3. Certain details of the Term Sheet may change as a result of further negotiations or changes in financial figures, but OCC does not anticipate any material changes to the Capital Plan. OCC intends to separately file a proposed rule change seeking approval of changes to its By-Laws, Certificate of Incorporation and relevant agreements, including its Stockholders Agreement, necessary to implement the Capital Plan.

[6] *See* Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) (''SEC Proposed Rules'').

contributed by the Stockholder Exchanges should OCC's equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk in compliance with Rule 17Ad–22, as discussed more fully below.

Background

OCC is a clearing agency registered with the Commission and is also a derivatives clearing organization (''DCO'') regulated in its capacity as such by the Commodity Futures Trading Commission (''CFTC''). OCC is a Delaware business corporation and is owned equally by the Stockholder Exchanges, five national securities exchanges for which OCC provides clearing services.[7] In addition, OCC provides clearing services for seven other national securities exchanges that trade options (''Non-Stockholder Exchanges''). In its capacity as a DCO, OCC also provides clearing services to four futures exchanges.

OCC has been designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing and Settlement Supervision Act, and the Commission is OCC's ''Supervisory Agency'' under Section 803(8) of the Payment, Clearing and Settlement Supervision Act. OCC is therefore a ''covered clearing agency'' (''CCA'') as defined in proposed amendments to the Commission's Rule 17Ad–22(a)(7) and would be required to comply with the provisions of proposed Rule 17Ad–22 applicable to CCA's, including paragraph (e)(15) thereof.[8]

Proposed Rule 17Ad–22(e)(15) provides:

> Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:
>
> (i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;
>
> (ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:
>
> (A) shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)–(iii) of this section, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii) of this section; and
>
> (B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions; and
>
> (iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.[9]

Over the last nine months, OCC has devoted substantial efforts to: (1) Develop a 5-year forward looking model of expenses; (2) quantify maximum recovery and wind-down costs under OCC's Recovery and Wind-Down Plan; (3) assess and quantify OCC's operational and business risks; (4) model projected capital accumulation taking into account varying assumptions concerning business conditions, fee levels, buffer margin levels and refunds; and (5) develop an effective mechanism that provides OCC access to replenishment capital in the event of losses that could cause OCC to be non-compliant with the SEC Proposed Rules. Incorporating the results of those efforts, the proposed change is intended to provide OCC with the means to increase its stockholder equity and, in particular, to obtain timely compliance with Rule 17Ad–22(e)(15)[10] as proposed by the Commission. A more detailed discussion of the manner in which the proposed change would allow OCC to comply with Rule 17Ad–22(e)(15) appears below.

OCC's Projected Capital Requirement

Using the methods described in detail below, OCC will annually determine a ''Target Capital Requirement'' consisting of (i) a ''Baseline Capital Requirement'' equal to the greatest of (x) six months operating expenses for the following year, (y) the maximum cost of the recovery scenario from OCC's Recovery and Wind-Down Plan, and (z) the cost to OCC of winding down operations as set forth in the Recovery and Wind-Down Plan, plus (ii) a ''Target Capital Buffer'' linked to plausible loss scenarios from operational risk, business risk and pension risk. OCC has determined that its currently appropriate ''Target Capital Requirement'' is $247 million, reflecting a Baseline Capital Requirement of $117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of $130 million. This Target Capital Buffer would provide a significant capital cushion to offset potential business losses.

As of December 31, 2013, OCC had total shareholders' equity of approximately $25 million,[11] meaning that OCC proposes to add additional capital of $222 million to meet its 2015 Target Capital Requirement. In addition, OCC would be obligated under paragraph (e)(15)(iii)[12] of proposed Rule 17Ad-22 to maintain ''a viable plan'' for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of the Rule;[13] *i.e.,* the Baseline Capital Requirement. OCC has determined that its viable plan for Replenishment Capital should provide for a ''Replenishment Capital Amount'' which would give OCC access to additional capital as needed up to a maximum of the Baseline Capital Requirement, which is currently $117 million.[14] Therefore, OCC's proposed Capital Plan would provide OCC in 2015 with ready access to approximately $364 million in equity capital as follows:

Baseline Capital Requirement	$117,000,000
Target Capital Buffer	130,000,000
Target Capital Requirement	247,000,000
Replenishment Capital Amount	117,000,000
Total OCC Capital Resources	364,000,000

Procedures Followed in Order To Determine Capital Requirement

Various measures were used in determining the appropriate level of capital necessary to comply with the

[7] The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[8] *SEC Proposed Rules* at 32–33, FR 29507, 29515 (May 22, 2014).

[9] *SEC Proposed Rules* at 417–418, FR 29507, 29616 (May 22, 2014).

[10] *SEC Proposed Rules* at 222–223, FR 29507, 29547–29548 (May 22, 2014).

[11] *See* OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's Web site, *http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.*

[12] *SEC Proposed Rules* at 418, FR 29507, 29616 (May 22, 2014).

[13] *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

[14] The obligation to provide Replenishment Capital will be capped at $200 million, which OCC projects will sufficiently account for increases in its capital requirements for the foreseeable future.

SEC Proposed Rules. An outside consultant conducted a ''bottom-up'' analysis of OCC's risks and quantified the appropriate amount of capital to be held against each risk. The analysis was comprehensive across risk types, including credit, market pension, operation, and business risk. Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC's operational risk was quantified at $226 million and pension risk at $21 million, resulting in the total Target Capital Requirement of $247 million. Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risk to zero by adjusting the levels at which fees and refunds are set and by adopting a ''Business Risk Buffer'' of 25% when setting fees. Other risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks that did not require use of OCC's capital. As discussed in more detail below in the context of OCC's Fee Policy, the Business Risk Buffer of 25% is achieved by setting OCC's fees at a level intended to achieve target annual revenue that will result in a 25% buffer for the year after paying all operating expenses.

An analysis was also performed to identify OCC's risk in terms of the regulatory requirements set forth in proposed Rule 17Ad–22(e)(15)(ii). This analysis estimated that, currently, OCC's maximum recovery costs would be $100 million and projected wind-down costs would be $73 million. OCC's projected expenses for 2015 are $234 million, so that six months projected expenses are $234 million/2 = $117 million. The greater of recovery or wind-down costs and six months of operating expenses is therefore $117 million, and OCC's Baseline Capital Requirement (minimum regulatory requirement) is therefore $117 million. OCC then computed the appropriate amount of a Target Capital Buffer from operational risk, business risk, and pension risk. This resulted in a determination that the current Target Capital Buffer should be $130 million. Thus, the Target Capital Requirement is $117 million + $130 million = $247 million.

Overview of, and Basis for, OCC's Proposal To Acquire Additional Equity Capital

In order to meet its Target Capital Requirement, and after consideration of available alternatives, OCC's Board approved a proposal from OCC's Stockholder Exchanges under which OCC would meet its Target Capital Requirement of $247 million in early 2015 as follows:

Shareholders' Equity as of 1/1/2014	$25,000,000
Shareholders Equity Accumulated Through Retained Earnings[15]	72,000,000
Additional Contribution from Stockholder Exchanges	150,000,000
Target Capital Requirement	247,000,000
Replenishment Capital Amount	117,000,000
Total OCC Capital Resources	364,000,000

The additional contribution of the Stockholder Exchanges would be made in respect of their Class B Common Stock on a *pro rata* basis. The Stockholder Exchanges will also commit to provide additional equity capital up to the Replenishment Capital Amount, which is currently $117 million, in the event Replenishment Capital is needed. While the Replenishment Capital Amount will increase as the Baseline Capital Requirement increases, it would be capped at a total of $200 million that could be outstanding at any point in time. OCC has estimated that the Baseline Capital Requirement would not exceed this amount before 2022. When the limit is being approached, OCC would revise the Capital Plan as needed to address future needs. In consideration for their capital contributions and replenishment commitments, the Stockholder Exchanges will receive dividends as described in the Dividend Policy discussed below for so long as they remain stockholders and maintain their contributed capital and commitment to replenish capital up to the Replenishment Capital Amount, subject to the $200 million cap.

Fee, Refund, and Dividend Policies

Upon reaching the Target Capital Requirement, the Capital Plan requires OCC to set its fees at a level that utilizes a Business Risk Buffer of 25%. The purpose of this Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Furthermore, the Capital Plan requires OCC to maintain Fee, Refund, and Dividend Policies, described in more detail below, which are designed to ensure that OCC's shareholders' equity remains well above the Baseline Capital Requirement. The required Business Risk Buffer of 25% is below OCC's 10-year historical pre-refund average buffer of 31%. The target will remain 25% so long as OCC's shareholders' equity remains above the Target Capital Requirement amount. The reduction in buffer margin from OCC's 10-year average of 31% to 25% reflects OCC's commitment to operating as an industry utility and ensuring that market participants benefit as much as possible from OCC's operational efficiencies in the future. This reduction will permit OCC to charge lower fees to market participants rather than maximizing refunds to clearing members and dividend distributions to Stockholder Exchanges. OCC will review its fee schedule on a quarterly basis to manage revenue as closely to this target as possible.[16] For example, if the Business Risk Buffer is materially above 25% after the first quarter of a particular year, OCC may decrease fees for the remainder of the year, and conversely if the Business Risk Buffer is materially below 25% at this time, OCC may increase fees for the remainder of the year.

The Capital Plan would allow OCC to refund approximately $40 million from 2014 fees to clearing members in 2015 and to reduce fees in an amount to be determined by the Board, effective in the second quarter 2015. OCC will announce new fee levels early in 2015 and will make them effective following notification to clearing members and any necessary approval by the Commission. OCC will endeavor to provide clearing members with no less than 60-day advance notice of the effectiveness of changes to fee levels, particularly those that result in increases to fee levels. No dividends will be declared until December 2015 and no dividends will be paid until 2016.

Changes to the Fee, Refund or Dividend Policies will require the affirmative vote of two-thirds of the directors then in office and approval of

[15] *See* Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR–OCC–2014–05) (Filing for immediate effectiveness of a proposed rule change with the Commission to reinstate OCC's permanent clearing fee schedule for securities options and securities futures that became effective May 1, 2007 (''Permanent Schedule Reinstatement Filing'')). The $72 million is after giving effect to the approximately $40 million refund referred to below.

[16] If OCC's fee schedule needs to be changed in order to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change seeking approval of the revised fee schedule.

the holders of all of OCC's outstanding Class B Common Stock. The formulas for determining the amount of refunds and dividends under the Refund and Dividend Policies, respectively, which are described in more detail below, are based on, among other things, the current tax treatment of refunds as a deductible expense. The Refund and Dividend Policies would each provide that in the event that refunds payable under the Refund Policy are not tax deductible, the policies would be amended to restore the relative economic benefits between the recipients of the refunds and the Stockholder Exchanges.[17]

Fee Policy

Under the Fee Policy, in setting fees each year, OCC would calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25%, *i.e.,* OCC will divide the expense forecast by .75. Establishing a Business Risk Buffer at 25% would allow OCC to manage the risk that fees would generate less revenue than expected due to lower-than-expected trading volume or other factors, or that expenses would be higher than projected. The Fee Policy also will include provisions from existing Article IX, Section 9 of the By-Laws to the effect that the fee schedule may also include additional amounts necessary to (i) maintain such reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to conduct development and capital planning activities in connection with OCC's services to the options exchanges, Clearing Members and the general public, and (ii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing Members and the general public; however, these provisions will be used only in extraordinary circumstances and to the extent that the Board has determined that the required amount of such additional reserves or additional surplus will exceed the full amount that will be accumulated through the Business Risk Buffer (prior to payment of refunds or dividends) so OCC's fees will ordinarily be based on its projected operating expenses and the Business Risk Buffer of 25%.

Under the proposed change, OCC would calculate its annual revenue target as follows:

Annual Revenue Target = Forward 12 Months Expense Forecast/(1–.25).

Because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections would include projections as to relative volume in each such category. The clearing fee schedule would therefore be set to achieve a blended or average rate per contract sufficient, when multiplied by total projected contract volume, to achieve the Annual Revenue Target. Under extraordinary circumstances, OCC would then add any amount determined to be necessary for additional reserves or surplus and divide the resulting number by the projected contract volume to determine the applicable average fee per cleared contract needed to achieve the additional amounts required. Consistent with past practice, OCC would notify its clearing members of the fees it determines it would apply for any particular period by describing the change in an information memorandum distributed to all clearing members. Consistent with past practice, OCC would also notify regulators of the fees it determines it would apply for any particular period by filing an amendment to its Schedule of Fees as a proposed rule change for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.[18]

Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a refund to Clearing Members in December of each year, beginning in 2015, in an amount equal to 50% of the excess, if any, of (i) pre-tax income for the year prior to the refund over (ii) the sum of (x) the amount of pre-tax income after the refund necessary to produce after-tax income sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year plus (y) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement. Such refund will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay refunds until such time as the Target Capital Requirement is restored through the accumulation of retained earnings. Refunds in accordance with the Refund Policy would resume once the Target Capital Requirement is restored and all Replenishment Capital is repaid in full, provided that the restoration of the Target Capital Requirement and the repayment of Replenishment Capital occurred within 24 months of the issuance date of the Replenishment Capital. If, within 24 months of the issuance date of any Replenishment Capital, such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, OCC would no longer pay refunds to clearing members, even if the Target Capital Requirement is restored and all Replenishment Capital is repaid at a later date.

Dividend Policy

The Dividend Policy would provide that, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a dividend on its Class B Common Stock in December of each year in an aggregate amount equal to the excess, if any, of (i) after-tax income for the year, after application of the Refund Policy (unless the Refund Policy has been eliminated, in which case the refunds shall be deemed to be $0) over (ii) the sum of (A) the amount required to be retained in order to maintain total shareholders' equity at the Target Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement. Such dividend will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. If

[17] This sentence and the previous sentence relate to a provision added to the Refund and Dividend Policies and designed to preserve the original business understanding between OCC and the Stockholder Exchanges even if refunds are no longer deductible.

[18] *See, e.g.,* the Permanent Schedule Reinstatement Filing, *supra* n. 14 [sic]; Proposed Rule Change by The Options Clearing Corporation to Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance With the Options Order Protection and Locked/Crossed Market Plan to $.01 per Contract, Securities Exchange Act Release No. 68025 (October 12, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

Replenishment Capital has been contributed and remains outstanding, OCC would not pay dividends until such time as the Target Capital Requirement is restored.

OCC's Status as an Industry Utility

OCC has always been operated on an ''industry utility'' model. The Stockholder Exchanges have heretofore contributed only minimal capital to OCC.[19] OCC's By-Laws currently require that OCC set its clearing fees at a level that is designed to cover operating expenses and to maintain such reserves and accumulate such additional capital as are deemed reasonably necessary for OCC to meet its obligations to its clearing members and the public. Clearing fees that are collected in excess of these amounts are refunded annually on a *pro rata* basis to the clearing members who paid them. Under this model, OCC has never paid dividends to the Stockholder Exchanges. However, OCC has paid significant refunds to clearing members each year. OCC is aware that a portion—possibly a significant portion—of those refunds are not passed through by the clearing members to their end user customers. Accordingly, by adopting an approach that includes paying dividends to the Stockholder Exchanges that have invested a significant amount of additional capital ($150 million) but that also reduces the historical pre-refund average buffer of 31% by adopting a Business Risk Buffer of 25%, OCC believes that the proposed approach maintains, and perhaps better aligns with, an industry utility model.

Given the very large increase in capital that OCC has determined to be appropriate in order to assure compliance with regulatory requirements and meet the increased responsibilities imposed upon it as a systemically important financial market utility, OCC has determined that the best alternative available to it is to obtain a substantial further capital contribution from the Stockholder Exchanges. This cannot be accomplished without modification of the past practice of not providing dividends to stockholders. Accordingly, it would be necessary for OCC to establish the new Fee Policy, Refund Policy, and Dividend Policy. Because of the Business Risk Buffer being set at 25%, the combination of the Fee, Refund and Dividend Policies will effectively cap the dividends to be paid to the Stockholder Exchanges at a level that the Board (with the advice of outside financial experts) has determined results in a reasonable rate of return on contributed capital, particularly in comparison to the implied cost of capital to the clearing members and their customers of instead pursuing an approach which required the accumulation of retained earnings through higher fees and no refunds for several years. OCC will continue to refund a significant percentage of excess clearing fees to clearing members, thereby benefiting both clearing members and their customers. The Capital Plan therefore effectively preserves OCC's industry utility model of providing its services in an efficient manner, but enhances the benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin from OCC's 10-year average of 31% to 25%.

Clearing members and customers will benefit from the proposed Capital Plan because it will allow OCC to continue to provide clearing services at low cost. As noted, OCC expects that this capital infusion from stockholders will enable OCC to provide a significant refund of 2014 fees. OCC further expects that its current clearing fees will be reduced significantly based on the Business Risk Buffer of 25% beginning in 2015 with refunds restored, and that these lower fees will continue for the foreseeable future.

Stockholder Exchanges will benefit from the dividend return they receive and, perhaps more importantly, they will be assured that OCC will be in a position to provide clearing services for their markets on an on-going basis within the same basic structure that has served these markets well since their inception and without the need to radically change the structure to address potential demands of outside equity investors. Non-Stockholder Exchanges will also benefit by continuing to receive OCC's clearing services for their products on the same basis as they presently do.[20]

OCC also believes that the Capital Plan will better align the interests of Stockholder Exchanges and clearing members with respect to expenses, since changes to the level of operating expenses directly affect the Target Capital Requirement. In sum, OCC believes that the present proposal represents a fair and reasonable balancing of the interests of the Stockholder Exchanges, the other exchanges for which OCC provides clearing services, clearing members, customers, and the general public while providing an immediate infusion of capital and a structure within which OCC can meet its obligations to the public as a systemically important financial market utility, as well as the requirements under the SEC Proposed Rules.

Replenishment Capital Plan

OCC proposes to put in place a Replenishment Capital Plan whereby OCC's Stockholder Exchanges are obligated to provide on a *pro rata* basis a committed amount of Replenishment Capital should OCC's total shareholders' equity fall below the hard trigger (as defined below). The aggregate committed amount for all five Stockholder Exchanges in the form of Replenishment Capital that could be outstanding at any time would be capped at the excess of (i) the lesser of (A) the Baseline Capital Requirement, which is currently $117 million, at the time of the relevant funding or (B) $200 million, over (ii) amounts of outstanding Replenishment Capital (''Cap''). The $200 million figure in the Cap formula takes into account projected growth in the Baseline Capital Requirement for the foreseeable future. The commitment to provide Replenishment Capital would not be limited by time, but only by the Cap. Replenishment Capital could be called in whole or in part after the occurrence of a ''hard trigger'' event described below, subject to the Cap. If the Baseline Capital Requirement approaches or exceeds $200 million, the Board can consider, as part of its annual review of the Replenishment Capital Plan that is required by the SEC Proposed Rules, alternative arrangements to obtain replenishment capital in excess of the $200 million committed under the Replenishment Capital Plan. In addition, the Refund Policy and the Dividend Policy will provide that, in the absence of obtaining any such alternative arrangements, the amount of the difference will be subtracted from amounts that would otherwise be available for the payment of refunds and dividends.

Replenishment Capital contributed to OCC under the Replenishment Capital Plan would take the form of a new class of common stock (''Class C Common Stock'') of OCC to be issued to the Stockholder Exchanges solely in exchange for Replenishment Capital contributions.

[19] OCC's common stock and paid in capital total $2,659,999. See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's Web site, *http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.*

[20] Non-Stockholder Exchanges contribute capital by purchasing a promissory note in the principal amount of $1,000,000. *See* Section 2 of Article VIIB of OCC's By-Laws. The required Capital Contribution of Non-Stockholder exchanges will not change under the Capital Plan.

The Replenishment Capital Plan would be part of OCC's overall Capital Plan. In implementing the Replenishment Capital Plan, OCC's management would monitor OCC's levels of shareholders' equity to identify certain triggers, or reduced capital levels, that might require action. OCC has identified two key triggers—a soft trigger and a hard trigger—and proposes that OCC take certain steps upon the occurrence of either as described in more detail below.

The ''soft trigger'' for re-evaluating OCC's capital would occur if OCC's shareholders' equity falls below the sum of (i) the Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. The soft trigger would be a warning sign that OCC's capital had fallen to a level that required attention and responsive action to prevent it from falling to unacceptable levels. Upon a breach of the soft trigger, OCC's senior management and the Board would review alternatives to increasing capital, and take appropriate action as necessary, including increasing fees or decreasing expenses, to restore shareholders' equity to the Target Capital Requirement.

The ''hard trigger'' for making a mandatory Replenishment Capital call would occur if shareholders' equity falls below 125% of the Baseline Capital Requirement (''Hard Trigger Threshold''). The hard trigger would be a sign that corrective action more significant and with a more immediate impact than increasing fees or decreasing expenses should be taken to increase OCC's capital, either as part of a recovery plan or a wind-down plan for OCC's business. OCC's shareholders' equity would have to fall more than $100,000,000 below the fully funded capital amount described above in order for the Hard Trigger Threshold to be breached. As a result, OCC views the breach of the Hard Trigger Threshold as unlikely and occurring only as a result of a significant, unexpected event. Upon a breach of the Hard Trigger Threshold, the Board would have to determine whether to attempt a recovery, a wind-down of OCC's operations or a sale or similar transaction, subject in each case to any necessary stockholder consent.[21] If the Board decides to wind-down OCC's operations, OCC would access the Replenishment Capital in an amount sufficient to fund the wind-down, as such amount would be determined by the Board, and subject to the Cap described above. If the Board decides to attempt a recovery of OCC's capital and business, OCC would access the Replenishment Capital in an amount sufficient to return shareholders' equity to an amount equal to $20 million above the Hard Trigger Threshold, subject to the Cap described above.

While Replenishment Capital is outstanding, no refunds or dividends would be paid and, if any Replenishment Capital remains outstanding for more than 24 months or the Target Capital Requirement is not restored during that period, changes would be made to how OCC calculates refunds and dividends, as described in more detail above under Refund Policy and Dividend Policy. In addition, while Replenishment Capital is outstanding, OCC would first utilize the entire amount of Available Funds to repurchase, on a *pro rata* basis from each Stockholder, to the extent permitted by applicable Delaware and federal law and regulations, outstanding shares of Class C Common Stock as soon as practicable after completion of the financial statements following the end of each calendar quarter at a price equal to the original amount paid for such shares, plus an additional ''gross up'' amount to compensate the holders of the Class C Common Stock for taxes on dividend income (if any) that they may have to recognize as a result of such repurchase.[22] For this purpose, ''Available Funds'' would equal, as of the end of any calendar quarter, the excess, if any, of (x) shareholders' equity over (y) the Minimum Replenishment Level. The ''Minimum Replenishment Level'' would mean $20 million above the Hard Trigger Threshold, so that OCC's shareholders' equity would remain at or above the Minimum Replenishment Level after giving effect to the repurchase.

Compliance with Rule 17Ad–22(e)(15)

The capital base described above will permit OCC to hold at all times cash and other assets of high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions. In compliance with proposed Rule 17Ad–22(e)(15),[23] OCC proposes at all times to hold liquid net assets funded by equity sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, which assets will always be greater than either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii)[24] of the proposed Rule. These assets will be held in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)–(iii)[25] of proposed Rule 17Ad–22, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii)[26] of that proposed rule.

OCC believes that the Replenishment Capital Plan described above together with OCC's ability to set fees and retain earnings as described above will assure OCC's ability to remain at all times in compliance with the requirements of proposed Rule 17Ad–22(e)(15),[27] including providing the basis for maintaining a viable capital plan for replenishment capital in compliance with subparagraph (e)(15)(iii)[28] of the rule.

Statutory Basis for the Advance Notice

OCC believes that the proposed change is consistent with Section 805(b) of the Clearing Supervision Act[29] because the proposed change will reduce systemic risk.[30] OCC believes that implementation of the Capital Plan will provide OCC with an immediate injection of capital and future committed capital to help ensure that it can continue to provide its clearing services if it suffers business losses as a result of a decline in revenues or otherwise. OCC believes that the proposed change, as described above, is necessary for it to meet the capital requirements under the proposed amendments[31] to Rule 17Ad–22. For

[21] The requirement for stockholder consent would arise under OCC's Restated Certificate of Incorporation, which would provide that any decision to attempt a recovery would require separate approval by the stockholders, while a decision to wind-down would require separate approval by the stockholders.

[22] Based on current federal rates, if the full amount of the payment is classified as a dividend and the recipient is entitled to a dividends received deduction, this gross up is estimated to be approximately 12% of the payment.

[23] *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

[24] *SEC Proposed Rules* at 408, FR 29507, 29613 (May 22, 2014).

[25] *SEC Proposed Rules* at 408–409, FR 29507, 29614 (May 22, 2014).

[26] *SEC Proposed Rules* at 412–413, FR 29507, 29615 (May 22, 2014).

[27] *SEC Proposed Rules* at 417–418, FR 29507, 29616 (May 22, 2014).

[28] *SEC Proposed Rules* at 418, FR 29507, 29616 (May 22, 2014).

[29] 12 U.S.C. 5464(b).

[30] 12 U.S.C. 5464(b)(3).

[31] *See generally* Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014).

these same reasons, the proposed change will reduce systemic risk because it will promote confidence that OCC will be able to continue operating even if it suffers business losses.

Anticipated Effect on and Management of Risk

OCC believes that the proposed change will reduce OCC's overall level of risk because it will help ensure that OCC will be able to continue to provide its clearing services even if it suffers significant business losses. As described above, the proposed change includes a significant infusion of permanent capital. In addition, each feature of the Capital Plan would help ensure that OCC's capital is sufficient on an ongoing basis to allow it to withstand business losses, whether resulting from a decline in revenue or otherwise. The Fee Policy would provide for the Business Risk Buffer, which is designed to ensure that fees will be sufficient to cover projected operating expenses. The Refund Policy and Dividend Policy both would allow for refunds of fees or payment of dividends, respectively, only to the extent that they would allow OCC to maintain shareholders' equity at the Target Capital Requirement. They would also prohibit refunds and dividends when Class C Common Stock is outstanding under the Replenishment Capital Plan and OCC was in the process of rebuilding its capital base. In addition, the Replenishment Capital Plan would establish a mandatory mechanism for the contribution of additional capital by OCC's stockholder exchanges in the event capital fell below desired levels. Together these features of the Capital Plan help ensure that OCC maintains levels of capital sufficient to allow it to absorb substantial business losses and meet its increased responsibilities imposed upon it as a systemically important financial market utility, which in turn helps reduce OCC's overall level of risk.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The designated clearing agency may implement this change if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission receives the notice of proposed change, or (ii) the date the Commission receives any further information it requests for consideration of the notice. The designated clearing agency shall not implement this change if the Commission has an objection.

The Commission may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Commission providing the designated clearing agency with prompt written notice of the extension. The designated clearing agency may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated clearing agency in writing that it does not object to the proposed change and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.

The designated clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[32]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–813 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–813. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site *http://www.optionsclearing.com/about/publications/bylaws.jsp.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–813 and should be submitted on or before February 24, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–02566 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* note 5, *supra.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74198; File No. SR–NASDAQ–2015–007]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rules of The NASDAQ Options Market Regarding Sharing of Risk Settings

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of The NASDAQ Options Market (''NOM''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 19b–4 thereunder,[4] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

authorize the Exchange to share any Participant-designated risk settings in the Exchange's Trading System with the Clearing Participant that clears transactions on behalf of the Participant.[5]

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

NASDAQ Stock Market Rules

Options Rules

* * * * *

Chapter VI, Trading Systems

Sec. 1–19 No change.

Sec. 20 Exchange Sharing of Participant-Designated Risk Settings

The Exchange may share any Participant-designated risk settings in the Trading System with the Clearing Participant that clears transactions on behalf of the Participant.

* * * * *

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 Section 20, Exchange Sharing of Participant-Designated Risk Settings, in Chapter VI, Trading Systems, of the NOM Rules in order to authorize the Exchange to share any Participant-designated risk settings in Exchange's Trading System with the Clearing Participant that clears transactions on behalf of the Participant. Pursuant to Chapter II, Participation, Section 2, Requirements for Options Participation, of the NOM Rules, Options Participants must be Options Clearing Participants or establish a clearing arrangement with a Clearing Participant. Every Clearing Participant is responsible for the clearance of transactions involving an options contract that is effected on or through NOM or its facilities or systems (''NOM Transactions'') of each Options Participant that gives up such Clearing Participant's name pursuant to a letter of authorization, letter of guarantee or other authorization (''Letter of Guarantee'') given by such Clearing Participant to such Options Participant, which authorization must be submitted to Nasdaq.[6] Further, no Options Participant may make any transactions on NOM unless a Letter of Guarantee providing that the issuing Clearing Participant accepts financial responsibilities for all NOM Transactions made by the guaranteed Participant has been issued for such Participant by a Clearing Participant and filed with Nasdaq Regulation.[7]

Thus, while not all Participants are Clearing Participants, all Participants require a Clearing Participant's consent to clear transactions on their behalf in order to conduct business on the Exchange. Each Participant that transacts through a Clearing Participant on the Exchange executes a Letter of Guarantee which codifies the relationship between the Participant and the Clearing Participant and provides the Exchange with notice of which Clearing Participants have relationships with which Participants. The Clearing Member that guarantees the Participant's transactions on the Exchange has a financial interest in understanding the risk tolerance of the Participant. The proposal would provide the Exchange with authority to directly provide Clearing Participants with information that may otherwise be available to such Clearing Participants by virtue of their relationship with the respective Participants.

At this time, the risk settings covered by this proposal are set forth in Chapter VI, Trading Systems, Section 19, Risk Monitor Mechanism.[8] The Exchange may adopt additional rules providing for Participant-designated risk settings other than those provided in Chapter VI, Section 19 that could be shared with a Participant's Clearing Participant under the proposal, and the Exchange would announce these additional risk settings by issuing an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change will allow the Exchange to directly provide a Participant's designated risk settings to the Clearing Participant that clears trades on behalf of the Participant. Because a Clearing Participant that executes a clearing Letter of Guarantee on behalf of a Participant guarantees all transactions of that Participant, and therefore bears the risk associated with those transactions, it is appropriate for the Clearing Participant to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system. The proposal will permit Clearing

[5] A ''Participant'' or ''Options Participant'' is a firm or organization that is registered with the Exchange pursuant to Chapter II of the NOM Rules for purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker''. The term ''Nasdaq Options Market Maker'' or ''Options Market Maker'' means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of the NOM Rules. The terms ''Nasdaq Options Order Entry Firm'' or ''Order Entry Firm'' or ''OEF'' mean those Options Participants representing as agent Customer Orders on NOM and those non-Market Maker Participants conducting proprietary trading. A ''Clearing Participant'' means a Participant that is self-clearing or a Participant that clears NOM Transactions for other Participants of NOM. The term ''Trading System'' means the automated trading system used by NOM for the trading of options contracts. *See* Chapter I, Section 1, Definitions, of the NOM Rules.

[6] *See* Chapter VI, Trading Systems, Section 15, Submission for Clearance, Subsection (a).

[7] *See* Chapter VII, Section 8, Letters of Guarantee.

[8] *See* Securities Exchange Act Release No. 64948 (July 22, 2011), 76 FR 45308 (July 28, 2011) (SR–NASDAQ–2011–077). The Mechanism provides protection to participants from the risk of multiple executions across multiple series of an option. Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose market makers, who are required to continuously quote in assigned options, to potentially significant market risk. Participants may establish a specified time period, not to exceed 15 seconds, within which a counting program will count the number of contracts traded in an option by such Participant. When the Participant has traded a certain number of contracts during the specified time period, the Risk Monitor Mechanism will automatically remove such Participant's quotations from the Exchange's disseminated quotation in all series of the particular option.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Participants who have a financial interest in the risk settings of Participants with whom the Clearing Participant has entered into a clearing Letter of Guarantee to better monitor and manage the potential risks assumed by Clearing Participants, thereby providing Clearing Participants with greater control and flexibility over setting their own risk tolerance and exposure and aiding Clearing Participants in complying with the Act. To the extent a Clearing Participant might reasonably require a Participant to provide access to its risk setting as a prerequisite to continuing to clear trades on the Participant's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on Participants and ensures that Clearing Participants are receiving information that is up to date and conforms to the settings active in the Exchange's trading system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-Clearing Participants because, unlike Clearing Participants, non-Clearing Participants do not guarantee the execution of a Participant's transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Participants, regardless of size, and would not impose a competitive burden on any Participant. Any Participant that does not wish to share its designated risk settings with its Clearing Participant could avoid sharing such settings by becoming a Clearing Participant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–007 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–NASDAQ–2015–007. 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–NASDAQ–2015–007, and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02511 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 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.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74196; File No. SR–BOX–2015–07]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend IM–3120–2 to Rule 3120 To Extend the Pilot Program That Eliminated the Position Limits for Options on SPDR S&P 500 ETF

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2015, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend IM–3120–2 to Rule 3120 to extend the pilot program that eliminated the position limits for options on SPDR S&P 500 ETF

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''SPY'') (''SPY Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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 Exchange proposes to amend IM–3120–2 to Rule 3120 to extend the time period of the SPY Pilot Program,[3] which is currently scheduled to expire on January 27, 2015, through July 12, 2015.

This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

In the original proposal to establish the SPY Pilot Program, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the SPY Pilot Program covering the first twelve (12) months during which the SPY Pilot Program was in effect (the ''Pilot Report'').[4] Accordingly, the Exchange is submitting the Pilot Report detailing the Exchange's experience with the SPY Pilot Program. The Pilot Report is attached as Exhibit 3 to this filing. The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. In extending the SPY Pilot Program, the Exchange states that if it were to propose another extension, permanent approval or termination of the program, the Exchange will submit another Pilot Report covering the period since the previous extension, which will be submitted at least 30 days before the end of the proposed extension.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is 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 a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the SPY Pilot Program to continue as other SROs have adopted similar provisions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is appropriate and will benefit market participants because immediate operability would allow the SPY Pilot Program to continue without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[3] *See* Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (Notice of Filing and Immediate Effectiveness of SR–BOX–2012–013).

[4] *See supra* note 3.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BOX–2015–07 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–BOX–2015–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2015–07, and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02503 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74193; File No. SR–BATS–2014–054]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the iShares Short Maturity Municipal Bond ETF of the iShares U.S. ETF Trust Under Rule 14.11(i) of BATS Exchange, Inc.

February 3, 2015.

I. Introduction

On December 12, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the iShares Short Maturity Municipal Bond ETF (the ''Fund'') under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on December 29, 2014.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Shares will be offered by the iShares U.S. ETF Trust (the ''Trust''), a Delaware statutory trust. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[5] BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Fund.[6] State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. BlackRock Investments, LLC serves as the distributor for the Trust. The Exchange represents that the Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented fire walls with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[7] The Exchange further represents that Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.[8]

The Exchange has made the following representations and statements regarding the Fund.[9] The Fund will seek to maximize tax-free current income. Generally, the Fund's effective duration[10] will be 1.2 years or less, and it is not expected to exceed 1.5 years.

To achieve its objective, the Fund will invest, under normal circumstances,[11]

[10] 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] *See* Securities Exchange Act Release No. 73895 (December 19, 2014), 79 FR 78125 (''Notice'').

[5] *See* Registration Statement on Form N–1A for the Trust, dated September 3, 2014 (File Nos. 333–179904 and 811–22649). *See also* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[6] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[7] *See* Notice, *supra* note 4, at 78126.

[8] *See id.; see also* BATS Rule 14.11(i)(7). The Exchange also represents that in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[9] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and Registration Statement. *See supra* notes 4 and 5, respectively.

[10] The Exchange states that effective duration is a measure of the Fund's price sensitivity to changes in yields or interest rates. *See* Notice, *supra* note 4, 79 FR at 78126, n.11.

[11] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

at least 80% of its net assets in Municipal Securities [12] that pay interest that is exempt from U.S. federal income taxes and the federal alternative minimum tax (the ''AMT''), along with short-term instruments and repurchase and reverse repurchase agreements for Municipal Securities. Under normal circumstances, less than 20% of the Fund's net assets may be invested in ''Other Investments,'' namely: Interest rate futures contracts and Municipal Securities that pay interest that is subject to the AMT.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[14] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[15] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association (''CTA''). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

According to the Exchange, intraday, executable price quotations on assets held by the Fund are available from major broker-dealer firms, and for exchange-traded assets, such intraday information is available directly from the applicable listing exchange.[16] All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors. Pricing information for repurchase agreements and securities not listed on an exchange or national securities market will be available from major broker-dealer firms and/or subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation. Quotation and last-sale information for the underlying exchange-listed investment companies will be available through CTA. Price information relating to all other securities held by the Fund will be available from major market data vendors.

On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[17] In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[18]

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[19] The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented fire walls with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[20] The Exchange further represents that Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic

[12] ''Municipal Securities'' are fixed and floating rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds, limited obligation bonds (or revenue bonds), private activity bonds, municipal notes, municipal commercial paper, tender option bonds, variable rate demand obligations, municipal lease obligations, stripped securities, structured securities, when issued securities, and zero coupon securities. The Fund may also invest in exchange-listed and non-exchange-listed investment companies that invest in Municipal Securities. The Exchange represents that structured securities, when combined with its ''Other Investments'' will not exceed 20% of the Fund's net assets. *See* Notice, *supra* note 4, 79 FR at 78127, n.21.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] *See* Notice, *supra* note 4, 79 FR at 78130.

[17] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge. Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[18] The Exchange represents that several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds. *See id.* at 78129, n.36.

[19] *See id.* at 78130.

[20] *See supra* note 7 and accompanying text.

information regarding the Fund's portfolio.[21] In addition, the Commission notes that, consistent with BATS Rule 14.11(i)(4)(B)(ii)(b), the Reporting Authority, as defined in BATS Rule 14.11(i)(3)(D), must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the Intermarket Surveillance Group (''ISG''), from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[22] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and that these procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening[23] and After Hours Trading Sessions[24] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[25]

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser under the 1940 Act.

(7) The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments.

(8) Structured securities, when combined with those instruments held as part of the Other Investments described above, will not exceed 20% of the Fund's net assets.

(9) As it relates to exchange traded investment companies, the Fund will only invest in investment companies that trade on markets that are a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(10) To the extent that the Fund invests in futures contracts, the Fund will only invest in futures contracts that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[26] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[27] that the proposed rule change (SR–BATS–2014–054) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02501 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* Notice, *supra* note 4, 79 FR at 78131.

[22] 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.

[23] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[24] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[25] *See* 17 CFR 240.10A–3.

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74197; File No. SR–Phlx–2015–11]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add New Rule 1016 To Authorize the Exchange To Share Phlx XL Participant-Designated Risk Settings in Phlx XL

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to add new Rule 1016 to authorize the Exchange to share any Phlx XL participant-designated risk settings in Phlx XL, the Exchange's trading system, with the clearing member that clears transactions on behalf of the Phlx XL participant.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

NASDAQ OMX PHLX Rules

Options Rules

* * * * *

[Rule 1016. Reserved.]

Rule 1016. Exchange Sharing of Phlx XL Participant-Designated Risk Settings

The Exchange may share any Phlx XL participant-designated risk settings in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the trading system with the clearing member that clears transactions on behalf of the Phlx XL participant. For purposes of this rule a Phlx XL participant is any specialist, streaming quote trader or remote streaming quote trader.

* * * * *

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 proposed to adopt new Rule 1016 to authorize the Exchange to share any Phlx XL participant-designated risk settings in Exchange's trading system with the clearing member that clears transactions on behalf of the Phlx XL participant. For purposes of Rule 1016, a Phlx XL participant is any specialist, streaming quote trader (''SQT'') or remote streaming quote trader (''RSQT'').[3]

Phlx XL participants are required to be members of the Exchange.[4] Rule 1046 requires a member or member organization conducting an options business to either be: (i) A clearing member of The Options Clearing Corporation (''OCC''); or (ii) have a clearing arrangement with an Exchange member organization that is a clearing member of OCC. Further, pursuant to Rule 1052, every member organization which is a clearing member of the OCC shall be responsible for the clearance of the Exchange options transactions of each member or member organization who gives up the name of such clearing member in an Exchange options transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange options transactions.

While not all Phlx XL participants are clearing members, all Phlx XL participants require a clearing member's consent to clear transactions on their behalf in order to conduct business on the Exchange. Each Phlx XL participant that transacts through a clearing member on the exchange executes a Letter of Guarantee which codifies the relationship between each Phlx XL participant and clearing member and provides the Exchange with notice of which clearing members have relationships with which Phlx XL participants. The clearing member that guarantees the Phlx XL participant's transactions on the Exchange has a financial interest in understanding the risk tolerance of the Phlx XL participant. The proposal would provide the Exchange with authority to directly provide clearing members with information that may otherwise be available to such clearing members by virtue of their relationship with the respective Phlx XL participants.

At this time, the risk settings covered by this proposal are set forth in Rule 1093, Phlx XL Risk Monitor Mechanism.[5] The Exchange may adopt additional rules providing for Phlx XL participant-designated risk settings other than those provided in Exchange Rule 1093 that could be shared with a Phlx XL participant's clearing member under the proposal, and the Exchange would announce these additional risk settings by issuing an Options Trader Alert.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change will allow the Exchange to directly provide a Phlx XL participant's designated risk settings to the clearing member that clears trades on behalf of the Phlx XL participant. Because a clearing member that executes a clearing Letter of Guarantee on behalf of a Phlx XL participant guarantees all transactions of that Phlx XL participant, and therefore bears the risk associated with those transactions, it is appropriate for the clearing member to have knowledge of what risk settings the Phlx XL participant may utilize within the Exchange's trading system. The proposal will permit clearing members who have a financial interest in the risk settings of Phlx XL participants with whom the clearing member has entered into a clearing Letter of Guarantee to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act. To the extent a clearing member might reasonably require a Phlx XL participant to provide access to its risk settings as a prerequisite to continuing to clear trades on the Phlx XL participant's behalf, the Exchange's

[3] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an 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 Remote Streaming Quote Trader Organization or ''RSQTO,'' which may also be referred to as a Remote Market Making Organization (''RMO''), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT nor a RSQT and to which Rule 1016 will not apply. A Registered Options Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[4] As noted above, A Registered Options Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[5] *See* Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR–Phlx–2006–05). The Mechanism provides protection to participants from the risk of multiple executions across multiple series of an option. Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose market makers, who are required to continuously quote in assigned options, to potentially significant market risk. Specialists, SQTs and RSQTs (collectively, ''Phlx XL participants'') assigned in a particular option may establish a specified time period, not to exceed 15 seconds, within which a counting program will count the number of contracts traded in an option by such Phlx XL participant. When the Phlx XL participant has traded a certain number of contracts during the specified time period, the Risk Monitor Mechanism will automatically remove such Phlx XL participant's quotations from the Exchange's disseminated quotation in all series of the particular option.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

proposal to share those risk settings directly reduces the administrative burden on Phlx XL participants and ensures that clearing members are receiving information that is up-to-date and conforms to the settings active in the Exchange's trading system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-clearing members because, unlike clearing members, non-clearing members do not guarantee the execution of a Phlx XL participant's transactions on the Exchange. The proposal is structured to offer the same enhancement to all clearing members, regardless of size, and would not impose a competitive burden on any participant. Any Phlx XL participant that does not wish to share its designated risk settings with its clearing member could avoid sharing such settings by becoming a clearing member of OCC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) [sic] of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2015–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–11, and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02504 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 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.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74192; File No. SR–ICC–2015–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Provide for the Clearance of Additional Standard Emerging Market Sovereign Single Names

February 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on January 23, 2015, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Subchapter 26D of its rules to provide for the clearance of additional Standard Emerging Market Sovereign CDS contracts (collectively, ''SES Contracts'').

ICC has been approved to clear eight SES Contracts: The Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, and the Republic of South Africa. The proposed change to the ICC Rules would provide for the clearance of additional SES Contracts, specifically the Republic of Chile, the Republic of Peru, the Republic of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Colombia, Ukraine, and the Republic of Poland.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. ICC has been approved to clear eight SES Contracts: The Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, and the Republic of South Africa. ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of additional SES Contracts, specifically the Republic of Chile, the Republic of Peru, the Republic of Colombia, Ukraine, and the Republic of Poland. These additional SES Contracts will be offered on the 2014 ISDA Credit Derivatives Definitions. The addition of these SES Contracts will benefit the market for emerging market credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional SES Contracts will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (''Act'').

These additional SES Contracts have terms consistent with the other SES Contracts approved for clearing at ICC and governed by Subchapter 26D of the ICC rules, namely the Federative Republic of Brazil, the United Mexican States, the Bolivarian Republic of Venezuela, the Argentine Republic, the Republic of Turkey, the Russian Federation, the Republic of Hungary, and the Republic of South Africa. Minor revisions to Subchapter 26D (Standard Emerging Market Sovereign (''SES'') Single Name) are made to provide for clearing the additional SES Contracts and described as follows.

Rule 26D–102 is modified to include the Republic of Chile, the Republic of Peru, the Republic of Colombia, Ukraine, and the Republic of Poland in the list of specific Eligible SES Reference Entities to be cleared by ICC.

Section 17A(b)(3)(F) of the Act[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The clearance of additional SES Contracts will allow market participants an increased ability to manage risk. ICC believes that acceptance of these new contracts, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[4]

Clearing of the additional SES Contracts will also satisfy the requirements of Rule 17Ad–22.[5] In particular, in terms of financial resources, ICC will apply its existing margin methodology to the additional SES Contracts. ICC believes that this model will provide sufficient margin to cover its credit exposure to its clearing members from clearing such contracts, consistent with the requirements of Rule 17Ad–22(b)(2).[6] In addition, ICC believes its Guaranty Fund, under its existing methodology, will, together with the required margin, provide sufficient financial resources to support the clearing of the new contracts consistent with the requirements of Rule 17Ad–22(b)(3).[7] ICC also believes that its existing operational and managerial resources will be sufficient for clearing of the additional SES Contracts, consistent with the requirements of Rule 17Ad–22(d)(4),[8] as the new contracts are similar from an operational perspective to existing SES Contracts. Similarly, ICC will use its existing settlement procedures and account structures for the new contracts, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15)[9] as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures. Finally, ICC will apply its existing default management policies and procedures for the new contracts. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional SES Contracts, in accordance with Rule 17Ad–22(d)(11).[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The additional SES Contracts will be available to all ICC Participants for clearing. The clearing of these additional SES Contracts by ICC does not preclude the offering of the additional SES Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional SES Contracts will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] 17 CFR 240.17Ad–22.

[6] 17 CFR 240.17Ad–22(b)(2).

[7] 17 CFR 240.17Ad–22(b)(3).

[8] 17 CFR 240.17Ad–22(d)(4).

[9] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[10] 17 CFR 240.17Ad–22(d)(11).

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–ICC–2015–003 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–ICC–2015–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2015–003 and should be submitted on or before March 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–02500 Filed 2–6–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2015–0007–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting the information collection requests (ICRs) below for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than April 10, 2015.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ____ .'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection and Maintenance of Steam Locomotives (Formerly Steam Locomotive Inspection).

OMB Control Number: 2130–0505.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required

each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Number(s): FRA–1, FRA–2, FRA–3, FRA–4, FRA–5, FRA–19.

Affected Public: Businesses.

Respondent Universe: 82 Steam Locomotive Owners/Operators.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
230.6—Waivers	82 owners	2 waiver letters	1 hour	2 hours.
230.12—Conditions for movement—Non-Complying Locomotives.	82 owners/operators	10 tags	6 minutes	1 hour.
230.14—31 Service Day Inspection—Notifications	82 owners/operators	120 reports	860 minutes	1,720 hours
	82 owners/operators	120 notifications	5 minutes	10 hours.
230.15—92 Service Day Inspection—Form 1	82 owners/operators	120 reports	980 minutes	1,960 hours.
230.16—Annual Inspection—Form 3—Notifications	82 owners/operators	120 reports	24.5 hours	2,940 hours
	82 owners/operators	120 notifications	5 minutes	10 hours.
230.17—1,472 Service Day Inspection—Form 4	82 owners/operators	12 forms	500.5 hours	6,006 hours.
230.6—Waivers	82 owners	2 waiver letters	1 hour	2 hours.
230.12—Conditions for movement—Non-complying Locomotives.	82 owners/operators	10 tags	6 minutes	1 hour.
230.20—Alteration Reports—Boilers—Form 19	82 owners/operators	5 reports	3 hours	15 hours.
230.21—Steam Locomotive Number Change	82 owners/operators	1 document	2 minutes	.033 hour.
230.33—Welded Repairs/Alterations—Written Request to FRA for Approval—Unstayed Surfaces.	82 owners/operators	5 letters	2 hours	10 hours
	82 owners/operators	3 letters	2 hours	6 hours.
230.34—Riveted Repairs/Alterations	82 owners/operators	2 requests	2 hours	4 hours.
230.49—Setting of Safety Relief Valves	82 owners/operators	10 tags	60 minutes	10 hours.
230.96—Main, Side, and Valve Motion Rods	82 owners/operators	1 letter	8 hours	.8 hours.
RECORD KEEPING REQUIREMENTS.				
230.13—Daily Inspection Reports—Form 2	82 owners/operators	3,650 reports	60 minutes	3,650 hours.
230.17—1,472 Service Day Inspection—Form 3	82 owners/operators	12 reports	15 minutes	3 hours.
230.18—Service Day Report: Form 5	82 owners/operators	150 reports	15 minutes	38 hours.
230.19—Posting of Copy—Form 1 & 3	82 owners/operators	300 forms	5 minutes	25 hours.
230.41—Flexible Stay Bolts with Caps	82 owners/operators	20 entries	120 hours	2,400 hours.
230.46—Badge Plates	82 owners/operators	3 reports	2 hours	6 hours.
230.47—Boiler Number	82 owners/operators	1 stamping	60 minutes	1 hour.
230.75—Stenciling Dates of Tests and Cleaning	82 owners/operators	50 tests	30 minutes	25 hours.
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 owners/operators	1 stamp	15 minutes	.25 hours.
230.116—Oil Tanks	82 owners/operators	30 stencils	30 minutes	15 hours.

Total Estimated Responses: 4,868.

Total Estimated Annual Burden: 18,866 hours.

Status: Extension of a Currently Approved Collection.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses.

Respondent Universe: 4 Railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.7—Waivers	100,000 workers	2 letters	2 hours	4 hours
219.9(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hour	2 hours
219.9(c)—Responsibility for compliance	450 railroads	10 docs/contracts	2 hours	20 hours
219.11(d)—General conditions for chemical tests	450 railroads	30 forms	2 minutes	1 hour
219.11(g) Training—Alcohol and Drug—Programs: New Railroads—Training.	5 railroads	5 programs	3 hours	15 hours
	50 railroads	50 training classes	3 hours	150 hours
219.23(d)—Notice to Employee Organizations	5 railroads	5 notices	1 hour	5 hours
219.104/219.107—Removal from Covered Svc.—Hearing Procedures.	450 railroads	500 form letters	2 minutes	17 hours
	450 railroads	50 requests	2 minutes	2 hours

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.201(c) Good Faith Determination	450 railroads	2 reports	30 minutes	1 hour
219.203/207/209—Notifications by Phone to FRA	450 railroads	104 phone calls	10 minutes	17 hours
219.205—Sample Collection and Handling—Form covering accidents/incidents.	450 railroads	400 forms	15 minutes	100 hours
	450 railroads	100 forms	10 minutes	17 hours
219.209(a)—Reports of Tests and Refusals	450 railroads	80 phone reports	2 minutes	3 hours
219.209(c)—Records—Tests Not Promptly Conducted.	450 railroads	40 records	30 minutes	20 hours
219.211(b) & (c)—Analysis and follow-up—MRO	450 railroads	8 reports	15 minutes	2 hours
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	20 hours	100 hours
219.405(c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38 hours
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	30 minutes	350 hours
219.601(a)—RR Random Drug Testing Programs—Amendments/Revisions.	5 railroads	5 programs	1 hour	5 hours
	450 railroads	20 revision	1 hour	20 hours
219.601(b)(1)—Random Selection Procedures—Drug.	450 railroads	5,400 documents	4 hours	21,600 hrs.
219.601(b)(4); 219.601(d)—Notices to Employees—New Railroads—Employee Notices—Tests.	5 railroads	100 notices	30 seconds	1 hour
	5 railroads	5 notices	10 hours	50 hours
	450 railroads	25,000 notices	1 minute	417 hours
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused from Urine Testing.	20,000 employees	20 doc. excuses	15 minutes	5 hours
219.607(a)—RR Random Alcohol Testing Programs—Amendments to Approved Program.	5 new railroads	5 programs	8 hours	40 hours
	450 railroads	20 revision	1 hour	20 hours
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing—Summary Report of Breath Alcohol/Drug Test.	450 railroads	100,500 records	5 minutes	8,375 hours
	450 railroads	200 reports	2 hours	400 hours

Total Responses: 133,818.

Total Estimated Total Annual Burden: 31,797 hours.

Status: Extension without Change of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 3, 2015.

Erin McCartney,

Budget Director.

[FR Doc. 2015–02528 Filed 2–6–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0103]

Technical Report Evaluating Lives Saved by Vehicle Safety Technologies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a technical report estimating the lives saved in 2012 and also cumulatively from 1960 through 2012 by vehicle safety technologies in passenger cars and LTVs. The report's title is: *Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012.*

DATES: Comments must be received no later than June 9, 2015.

ADDRESSES: *Report:* The technical report is available on the Internet for viewing in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/812069.pdf.*

Comments: You may submit comments [identified by Docket Number NHTSA–2014–0103] by any of the following methods:

- *Internet:* To submit comments electronically, go to the U.S. Government regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* Written comments may be faxed to 202–493–2251.
- *Mail:* Send comments to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.
- You may call Docket Management at 1–800–647–5527.

Instructions: For detailed instructions on submitting comments and additional information see the Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John Kindelberger, Chief, Evaluation Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4696. Email: *john.kindelberger@dot.gov.*

SUPPLEMENTARY INFORMATION: NHTSA began in 1975 to evaluate the effectiveness of vehicle safety technologies associated with the Federal Motor Vehicle Safety Standards. By June 2014, NHTSA had evaluated the effectiveness of virtually all the life-saving technologies introduced in passenger cars, pickup trucks, SUVs, and vans from about 1960 up through about 2010. A statistical model estimates the number of lives saved from 1960 to 2012 by the combination of these life-saving technologies. Fatality Analysis Reporting System (FARS) data for 1975 to 2012 documents the actual crash fatalities in vehicles

that, especially in recent years, include many safety technologies. Using NHTSA's published effectiveness estimates, the model estimates how many people would have died if the vehicles had not been equipped with any of the safety technologies. In addition to equipment compliant with specific FMVSS in effect at that time, the model tallies lives saved by installations in advance of the FMVSS, back to 1960, and by non-compulsory improvements, such as pretensioners and load limiters for seat belts. FARS data has been available since 1975, but an extension of the model allows estimates of lives saved in 1960 to 1974.

A previous NHTSA study (70 FR 3975) using the same methods estimated that vehicle safety technologies had saved 328,551 lives from 1960 through 2002. The agency now estimates 613,501 lives saved from 1960 through 2012. The annual number of lives saved grew from 115 in 1960, when a small number of people used lap belts, to 27,621 in 2012, when most cars and LTVs were equipped with numerous modern safety technologies and belt use on the road achieved 86 percent.

Comments

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2014–0109) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit one copy of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible.* DOT's guidelines may be accessed at *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_quality_guidelines/index.html.*

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 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. You may also periodically access *http://www.regulations.gov* and enter the number for this docket (NHTSA–2014–0103) to see if your comments are online.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

(2) FDMS provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: (a) ''Quick Search'' to search using a full-text search engine, or (b) ''Advanced Search,'' which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, **Federal Register** reference, CFR citation, etc. Each data field in the advanced search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in FDMS that is relevant to the requested subject or topic.

(3) You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 30111, 30181–83 delegation of authority at 49 CFR 1.95 and 501.8.

Issued in Washington, DC, on February 4, 2015.

Terry Shelton,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2015–02547 Filed 2–6–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Study on Improving the Certification Process for the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and request for comment.

SUMMARY: Section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Reauthorization Act) requires the Secretary of the Treasury (Secretary) to conduct a study on the certification process in the Terrorism Risk Insurance Act of 2002, as amended (TRIA). The Secretary also must submit a report on the results of its study to Congress. To assist the Secretary in conducting the study and formulating the report, the Federal Insurance Office (FIO) is issuing this request for comment.

DATES: Comments must be submitted not later than March 6, 2015.

ADDRESSES: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. In general, the Department will post all comments to *www.regulations.gov* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department will also make such comments available for public inspection and copying in the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Electronic submissions are encouraged.

Comments may also be mailed to the Department of the Treasury, Federal Insurance Office, MT 1410, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Additional Instructions. Responses should also include: (1) The data or rationale, including examples, supporting any opinions or conclusions; (2) approaches and options respecting improvement of the certification process, if any; and, (3) any specific legislative, administrative, or regulatory proposals for carrying out such approaches or options.

FOR FURTHER INFORMATION CONTACT: Brett D. Hewitt, Policy Advisor, Federal Insurance Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5892 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107(b) of the Reauthorization Act (Pub. L. 114–1) requires the Secretary to conduct a study on the process by which the Secretary determines whether to certify an act as an ''act of terrorism'' under section 102(1) of TRIA (''Certification Study''). Section 107(c) of the Reauthorization Act prescribes certain factors that the Certification Study must examine. After completing the Certification Study, the Department of the Treasury (Treasury) must submit a report on its results to Congress.

II. Solicitation for Comments

A. Collecting information and views on the factors that must be analyzed in the Certification Study will enhance the accuracy and value of the study and report to Congress. Accordingly, comments are sought on:

1. The establishment of a reasonable timeline by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism;

2. The impact that the length of any timeline proposed to be established may have on the insurance industry, policyholders, consumers, and taxpayers as a whole;

3. The factors the Secretary would evaluate and monitor during the certification process, including the ability of the Secretary to obtain the required information regarding the amount of projected and incurred losses resulting from an act which the Secretary would need in determining whether to certify the act as an act of terrorism;

4. The appropriateness, efficiency, and effectiveness of the consultation process required under section 102(1)(A) of TRIA and any recommendations on changes to the consultation process; and

5. The ability of the Secretary to provide guidance and updates to the public regarding any act that may reasonably be certified as an act of terrorism.

B. In addressing the considerations set forth in section 107(c) of the Reauthorization Act (as described in Paragraph (II)(A) of this notice), commenters are invited to submit views on:

1. The manner and extent to which the certification timeline and the Secretary's ability to make an accurate determination on whether to certify an act as an act of terrorism may be influenced by domestic or international law enforcement processes; and

2. The implications for insurers or policyholders if one or more events are certified as acts of terrorism but the aggregate, calendar-year insured losses do not exceed the amount required for Treasury to make payments for insured losses.

Dated: February 4, 2015.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2015–02563 Filed 2–6–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning qualified separate lines of business.

DATES: Written comments should be received on or before April 10, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Separate Lines of Business.

OMB Number: 1545–1221. Regulation Project Number: EE–147–87.

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as

operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 125.

Estimated Time per Respondent: 3 hours, 33 minutes.

Estimated Total Annual Burden Hours: 444.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 2, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–02522 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 99–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99–43, Nonrecognition Exchanges under Section 897.

DATES: Written comments should be received on or before April 10, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nonrecognition Exchanges under Section 897.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Abstract: Notice 99–43 announces modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize a gain under Code 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertability as the shares exchanged without any additional rights or features.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 2, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–02523 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before April 10, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity Credit.

OMB Number: 1545–1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit. The work opportunity credit covers individuals who begin work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 440,000.

Estimated Time Per Respondent: 7 hr., 35 min.

Estimated Total Annual Burden Hours: 3,335,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 2, 2015.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–02495 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6118, Claim for Refund of Income Tax Return Preparer Penalties.

DATES: Written comments should be received on or before April 10, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Claim for Refund of Income Tax Return Preparer Penalties.

OMB Number: 1545–0240.

Form Number: 6118.

Abstract: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 11,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 2, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–02524 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8621–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8621–A, Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

DATES: Written comments should be received on or before April 10, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

OMB Number: 1545–1950.

Form Number: 8621–A.

Abstract: Form 8621–A is necessary for certain taxpayers/shareholders who are investors in passive foreign investment companies (PFIC's) to request late deemed sale or late deemed dividend elections (late purging elections) under Reg. 1.1298–3(e). The form provides a taxpayer/shareholder the opportunity to fulfill the requirements of the regulation in making the election by asserting the following: (i) The election is being made before an IRS agent has raised on audit the PFIC status of the foreign corporation for any taxable year of the taxpayer/shareholder; (ii) the taxpayer/shareholder is agreeing (by submitting Form 8621–A) to eliminate any prejudice to the interests of the U.S. government on account of the taxpayer/shareholder's inability to make timely purging elections; and (iii) the taxpayer/shareholder shows as a balance due on Form 8621–A an amount reflecting tax plus interest as determined under Reg. 1.1298(e)(3).

Current Actions: There is no change to the form previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 65 hours, 24 minutes.

Estimated Total Annual Burden Hours: 785.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 2, 2015.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–02521 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, February 25, 2015, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Ms. Billups at 1–888–912–1227 or 214–413–6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: February 3, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–02487 Filed 2–6–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal

Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, March 4, 2015, in Room 730 at 810 Vermont Ave NW., Washington, DC. The meeting will convene at 9:00 a.m. and end at 4:00 p.m., and is open to the public. Anyone attending must show a valid photo ID to building security and be escorted to the meeting. Please allow 15 minutes before the meeting begins for this process.

The agenda will include a report from the Journal of Rehabilitation Research and Development sub-committee and comments from the VA Secretary.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, or needing further information may contact Ms. Pauline Cilladi-Rehrer, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5607, or by email at *pauline.cilladi-rehrer@va.gov.* at least 5 days prior to the meeting date.

Dated: February 4, 2015.

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2015–02567 Filed 2–6–15; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2014–BT–STD–0036]

RIN 1904–AD35

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Hearth Products

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial and industrial equipment. In addition to specifying a list of covered residential products and commercial equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. The U.S. Department of Energy (DOE) has previously published a proposed determination of coverage to classify gas-fired hearth products as covered consumer products under the applicable provisions in EPCA. In this document, DOE proposes an energy conservation standard for hearth products following its notice of proposed coverage determination. This proposed rule also announces a public meeting to receive comment on the proposed standard and associated analyses and results.

DATES: *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 April 10, 2015. See section VII, ''Public Participation,'' for details.

Meeting: DOE will hold a public meeting on Wednesday, March 23, 2015, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards at the phone number above to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer or tablet into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section VII, ''Public Participation,'' near the end of this notice.

Instructions: Any comments submitted must identify the NOPR for Energy Conservation Standards for Hearth Products, and provide docket number EERE–2014–BT–STD–0036 and/or regulatory information number (RIN) number 1904–AD35. 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: HearthHeatingProd2014STD0036@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in Word Perfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form on encryption.

3. *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 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 Office, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

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

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=84* . This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further 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: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1692. Email: *HearthHeatingProd2014STD0036@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 5869507. Email: *Eric.Stas@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Proposed Rule

Title III, Part B[1] of the Energy Policy and Conservation Act of 1975 (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.[2] In addition to specifying a list of covered residential products and commercial equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) In a proposed determination of coverage published in the **Federal Register** on December 31, 2013, DOE proposed to classify hearth products as covered consumer products under EPCA. 78 FR 79638.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) The statute also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this notice, DOE proposes a new energy conservation standard for hearth products. The proposed standard is a prescriptive design requirement for standby mode operation that would disallow the use of continuously-burning pilots (*i.e.,* ''standing pilots'' or ''constant-burning pilots'') in hearth products. The proposed standard, if adopted, would apply to all hearth products, as defined in section IV.A, that are manufactured in, or imported into, the United States on and after the date 5 years after the publication of the final rule for this rulemaking. The proposed design standard would eliminate all standby mode gas consumption for hearth products as defined in the proposed determination rulemaking (78 FR 79638). DOE considered a combination of factors in developing its proposal to disallow continuously burning pilot lights, rather than other possibilities such as proposing to regulate active mode energy consumption with a performance standard or other prescriptive requirements. The rationale for this tentative decision to focus on standby mode energy consumption by the standing pilot is further explained in section III.B of this NOPR.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated 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), Public Law 112–210 (Dec. 18, 2012).

A. Benefits and Costs to Consumers

Table I.1 presents DOE's evaluation of the economic impacts of the proposed standard on consumers of hearth products, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings to consumers are positive and estimated at $165 over the lifetime of the average hearth product, and the PBP is estimated at 2.9 years, which is below the average hearth product lifetime of approximately 15 years.[4] As noted above, these impacts result from the removal of a continuously-burning pilot in units that would otherwise have them, which reduces the standby mode fossil fuel energy consumption of hearth products.[5]

TABLE I.1—IMPACTS OF PROPOSED HEARTH PRODUCT ENERGY CONSERVATION STANDARD ON CONSUMERS OF HEARTH PRODUCTS

Product	Simple average LCC savings 2013$	Simple payback period years
Hearth Products	165	2.9

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows for the industry from the base year through the end of the analysis period (2014 to 2050). Using a real discount rate of 8.7 percent, DOE estimates that the base case INPV for manufacturers of gas hearth products is $125.3 million in 2013$.[6] Under the proposed design standard, DOE expects that INPV impacts may range from a loss of 2.6 percent of INPV to a gain of 0.4 percent.

C. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standard for hearth products would save a significant amount of energy in the form of reduced natural gas consumption during stand-by mode. The lifetime energy savings for hearth products purchased in the 30-year period that begins in the first full year of compliance with an amended standard (2021–2050), relative to the base case without amended standards, amount to 0.69 quads[7] of full-fuel-cycle (FFC) energy.[8] This represents a savings of about 77 percent relative to the energy use of the hearth product ignition systems in the base case, which reflects the existing market share of electronic ignition systems.

The cumulative net present value (NPV) of total consumer costs and savings for the proposed hearth products standard ranges from $1.03 billion to $3.12 billion at 7-percent and 3-percent discount rates, respectively. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for hearth products purchased in 2021–2050.

In addition, the proposed hearth products standard would have significant environmental benefits. The energy savings described above are expected to result in cumulative emission reductions of 37.0 million metric tons (Mt)[9] of carbon dioxide (CO_2), 486 thousand tons of methane (CH_4), 125 thousand tons of nitrogen oxides (NO_X), and 0.01 thousand tons of nitrous oxide (N_2O).[10] Projected emissions show an increase of 4.26 thousand tons of sulfur dioxide (SO_2) and 0.01 tons of mercury (Hg) due to higher electricity use associated with the shift to electronic ignition in the subject hearth products.[11] The cumulative reduction in CO_2 emissions through 2030 amounts to 11.1 Mt, which is equivalent to the emissions resulting from the annual electricity use of 1.5 million homes.[12]

The value of the CO_2 reduction is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[13] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I.2), DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.2 billion and $3.4 billion, with a value of $1.1 billion using the central SCC case represented by $40.5/t in 2015. Additionally, DOE estimates the present monetary value of the NO_X emissions reduction to be $0.06 billion to $0.15 billion at 7-percent and 3-percent discount rates, respectively.[14]

Table 1.2 summarizes the national economic benefits and costs expected to result from the proposed standard for hearth products.

TABLE I.2—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARD FOR HEARTH PRODUCTS (TSL 1)*

Category	Present value Billion 2013$	Discount rate %
Benefits		
Consumer Operating Cost Savings	1.536	7
	4.128	3

[3] The average LCC savings are measured relative to the base-case efficiency distribution, which depicts the hearth product market in the compliance year (see section III.H). The simple PBP, which is designed to compare specific hearth product efficiency levels, is measured relative to the baseline (see section IV.C.1).

[4] See section IV.F.2.d for the derivation of the average hearth product lifetime.

[5] Impacts of match-lit hearth products were not included in the analysis. For more details, see section IV.A.1.

[6] All monetary values in this document are expressed in 2013 dollars; discounted values are discounted to 2014 unless explicitly stated otherwise.

[7] A quad is equal to 10^{15} British thermal units (Btu).

[8] The reported savings are net savings after accounting for the slight increase in electricity use resulting from the proposed standard.

[9] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[10] The emissions reductions primarily concern reduction in combustion emissions from standing pilots. DOE calculated emissions reductions relative to the *Annual Energy Outlook 2014* (*AEO 2014*) Reference case, which generally represents current legislation and environmental regulations, including recent government actions for which implementing regulations were available as of October 31, 2013. The impacts on mercury emissions are expected to be negligible.

[11] DOE calculated power sector emissions impacts relative to the *Annual Energy Outlook 2014* (*AEO 2014*) Reference case, which generally represents current legislation and environmental regulations, including recent government actions for which implementing regulations were available as of October 31, 2013. The impacts on mercury emissions are expected to be negligible.

[12] Environmental Protection Agency. EPA GHG calculator (Last Accessed; December 23, 2014) (Available at: *http://www.epa.gov/cleanenergy/energy-resources/calculator.html#results*).

[13] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf).*

[14] DOE is investigating valuation of avoided Hg and SO_2 emissions.

TABLE I.2—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARD FOR HEARTH PRODUCTS (TSL 1)*—Continued

Category	Present value Billion 2013$	Discount rate %
CO_2 Reduction Monetized Value ($12.0/t case) **	0.226	5
CO_2 Reduction Monetized Value ($40.5/t case) **	1.098	3
CO_2 Reduction Monetized Value ($62.4/t case) **	1.763	2.5
CO_2 Reduction Monetized Value ($119/t case) **	3.405	3 (95th percentile)
NO_X Reduction Monetized Value (at $2,684/ton) **	0.058	7
	0.148	3
Total Benefits †	2.693	7
	5.373	3
Costs		
Consumer Incremental Installed Costs	0.505	7
	1.004	3
Total Net Benefits		
Including Emissions Reduction Monetized Value †	2.187	7
	4.369	3

* This table presents the costs and benefits associated with hearth products shipped in 2021–2050. These results include benefits to consumers that accrue after 2050 from the products purchased in 2021–2050. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015).

The benefits and costs of today's proposed energy conservation standard, for hearth products sold in 2021–2050, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from consumer operation of products that meet the proposed new or amended standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[15]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of hearth products shipped in 2021–2050. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standard are shown in Table I.3. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015)), the cost of the hearth products standards proposed in this rule is $61.1 million per year in increased equipment costs, while the estimated benefits are $186 million per year in reduced equipment operating costs, $67 million per year in CO_2 reductions, and $7.0 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $199 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the hearth products standards proposed in this rule is $61.2 million per year in increased equipment costs, while the estimated benefits are $251 million per year in reduced equipment operating costs, $67 million per year in CO_2 reductions, and $9.0 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $266 million per year.

[15] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE I.3—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR HEARTH PRODUCTS (TSL 1)

	Discount rate %	Primary estimate *	Low net benefits estimate *	High net benefits estimate *
		million 2013$/year		
Benefits				
Consumer Operating Cost Savings	7%	186	175	195.
	3%	251	235	265.
CO_2 Reduction Monetized Value ($12.0/t case) **.	5%	20	20	20.
CO_2 Reduction Monetized Value ($40.5/t case) **.	3%	67	67	67.
CO_2 Reduction Monetized Value ($62.4/t case) **.	2.50%	98	98	98.
CO_2 Reduction Monetized Value ($119/t case) **.	3%	207	207	207.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7%	7.00	7.00	7.00.
	3%	8.99	8.99	8.99.
Total Benefits †	7% plus CO_2 range	212 to 400	202 to 389	222 to 410.
	7%	260	249	269.
	3% plus CO_2 range	280 to 468	264 to 452	294 to 482.
	3%	327	311	341.
Costs				
Consumer Incremental Equipment Costs	7%	61.1	61.1	61.1.
	3%	61.2	61.2	61.2.
Net Benefits				
Total †	7% plus CO_2 range	151 to 339	141 to 328	161 to 349.
	7%	199	188	208.
	3% plus CO_2 range	219 to 407	203 to 390	233 to 420.
	3%	266	250	280.

* This table presents the annualized costs and benefits associated with hearth products shipped in 2021–2050. These results include benefits to consumers that accrue after 2050 from the products purchased in 2021–2050. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Net Impacts, and High Net Impacts Estimates utilize projections of energy prices from the *AEO 2014* Reference case, Low Estimate, and High Estimate, respectively. Incremental product costs are the same for each Estimate.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

D. Conclusion

DOE has tentatively concluded that the proposed standard represents the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy. DOE further notes that products achieving the proposed standard are already commercially available. Based on the analyses described previously, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking, DOE may adopt the standard proposed in this notice, or some combination of options that incorporate the proposed standard in part.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for hearth products.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (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, a program designed to improve energy efficiency for consumer products and certain commercial and industrial equipment. In addition to specifying a list of covered residential products and commercial equipment, EPCA, as amended, contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) Specifically, for a given product to be classified as a covered product, the Secretary must determine that:

(A) Classifying the product as a covered product is necessary or appropriate for the purposes of carrying out EPCA; and

(B) The average annual per-household energy use by products of such type is

likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

(42 U.S.C. 6292(b)(1)(A) and (B))

For the Secretary to prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(a)(20) and (b)(1), the Secretary must also determine that:

(A) The average household energy use of the type (or class) of products has exceeded 150 kWh (or its Btu equivalent) per household for any 12-month period;

(B) The aggregate 12-month household energy use of the type (or class) of products has exceeded 4.2 TWh;

(C) Substantial improvement in energy efficiency is technologically feasible; and

(D) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified.

(42 U.S.C. 6295(l)(1)(A)–(D)) [16]

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program.

DOE must follow specific statutory criteria for prescribing standards for covered products, including hearth products. As indicated previously, 42 U.S.C. 6295(o) and (p) contain specific criteria for establishing or amending energy conservation standards for covered products. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including hearth products, if no test procedure has been established for the product,[17] or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, after receiving comments on the proposed standard, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination by, to the greatest extent practicable, considering the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the 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 that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) 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 and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of covered product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature that other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

In addition, pursuant to other amendments contained in EISA 2007, any final rule for new or amended

[16] DOE notes that a drafting error arose at the time Congress adopted the amendments to EPCA contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140. As part of the EISA 2007 amendments, Congress added metal halide lamp fixtures to the list of specifically enumerated covered products at 42 U.S.C. 6292(a)(19) and shifted the provision for the Secretary to classify ''any other type'' of a consumer product as a covered product to 42 U.S.C. 6292(a)(20). However, Congress did not similarly amend the criteria and other requirements for setting energy conservation standards for ''other'' covered products in 42 U.S.C. 6295(l)(1) and (2). The provisions in 42 U.S.C. 6295(l) continued to refer to standards for ''any type'' of covered product, while continuing to refer to 42 U.S.C. 6292(a)(20). Clearly, the provisions at 42 U.S.C. 6295(l) were intended to apply more broadly than to metal halide lamp fixtures, so DOE continues to apply this provision as if the drafting error had not occurred. To do otherwise would render the provision at 42 U.S.C. 6295(l) a nullity, thereby thwarting DOE's ability to set energy conservation standards for newly covered products, an outcome which Congress could not have intended.

[17] As discussed in section III.D, DOE is not prescribing a test procedure because it is unnecessary for the prescriptive energy conservation standards that were considered for this NOPR.

energy conservation standards promulgated after July 1, 2010 is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B))

Finally, it is noted that under 42 U.S.C. 6295(m), the agency must periodically review established energy conservation standards for a covered product. Under this requirement, such review must be conducted no later than 6 years from the issuance of any final rule establishing or amending a standard for a covered product.

B. Background

DOE has not previously conducted an energy conservation standards rulemaking for hearth products. Consequently, there are currently no Federal energy conservation standards for hearth products.

On December 31, 2013, DOE published a notice of proposed determination (NOPD) of coverage to classify hearth products as covered products under EPCA. 78 FR 79638. In the proposed determination of coverage, DOE presented its preliminary findings relating to the energy use of hearth products to determine whether they could be classified as a type of covered product under the requirements of 42 U.S.C. 6292(b)(1)(A) and (B), and whether they would meet the criteria for DOE to prescribe an energy conservation standard under 42 U.S.C. 6295(l)(1)(A)–(D). (See section II.A for a discussion of these statutory criteria.) DOE also proposed to define a ''hearth product'' as ''a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed.'' 78 FR 79638, 79640 (Dec. 31, 2013). The proposed determination is still pending, but as discussed in section IV.A, DOE is using the proposed definition to delineate the scope of this NOPR. In addition, DOE has considered some of the comments submitted in response to the proposed coverage determination, which are relevant to the development of proposed energy conservation standards for hearth products and addresses those comments as applicable in this NOPR.

III. General Discussion

A. Scope of Coverage

In the December 2013 NOPD, DOE proposed to adopt a definition of hearth product that means a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed.

Based upon the scope arising from this proposed definition and after making the necessary energy use calculations, DOE tentatively determined that hearth products would meet the relevant statutory criteria so as to justify coverage as a consumer product under EPCA, and provided the relevant justifications in the notice. 78 FR 79638, 79640–41 (Dec. 31, 2013). In the December 2013 NOPD, DOE provided examples of several common hearth product types that would be covered under the proposed definition, including vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and vent-less hearth products. *Id.* at 79640.

DOE used the definition proposed in the December 2013 NOPD (as stated above) to determine the scope of this NOPR.

In setting forth new energy conservation standards for any type of covered product, EPCA requires DOE to determine that: (1) The product consumes more than 150 kilowatt-hours (or its Btu equivalent) per household in any 12 month period occurring before such a determination; (2) the aggregate energy use within the United States was more than 4,200,000,000 kilowatt-hours (kWh) (or its Btu equivalent) in any 12 month period occurring before such a determination; (3) substantial improvement in energy efficiency for the products is technologically feasible; and (4) the application of labeling is not likely to be sufficient for manufacturers to produce or for consumers to purchase products that would achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1)(A)–(D))

With regards to the first and second criteria, DOE has estimated the average household consumption to be 7.5 million Btu (equal to 2,198 kWh), and aggregate national energy use to be 95 trillion Btu (equal to 27,800,000,000 kWh) for currently-installed hearth products. (Details on these calculations can be found in chapter 7 of the NOPR TSD.) With regard to the third criterion, DOE found that several technologies are available to substantially improve the energy efficiency (or reduce the overall energy consumption) of hearth products in standby-mode. These technologies are discussed in section IV.C.2. Finally, with regard to the last criterion, DOE found through product literature review and manufacturer interviews that labeling is already often included in manuals that suggest users extinguish the pilot light when the product is not in use. However, for products such as those that include a millivolt gas valve, the user must allow the standing pilot to remain on so that the valve can be activated or deactivated by a thermostat or remote control. Further, regardless of instructions in the manual, DOE understands that a significant percentage of consumers allow the standing pilot light to burn year-round. DOE has, therefore, tentatively determined that the application of labeling is not sufficient to result in the maximum energy savings that would be technologically feasible and economically justified (*i.e.,* the savings achievable through the proposal presented, in this NOPR). In summary, DOE has tentatively determined that hearth products, under the proposed definition, meet all the criteria for establishing energy conservation standards under EPCA.

The purpose of this NOPR is to propose energy conservation standards for products that, together with the December 2013 proposed coverage determination, would establish coverage and energy conservation standards for hearth products. DOE has not previously conducted an energy conservation standards rulemaking for hearth products. If, after public comment, DOE issues a final determination of coverage for this type of product, DOE would consider adoption of the energy conservation standards for hearth products proposed in this NOPR.

DOE received several comments in response to the December 2013 NOPD that pertained to the definition and broad range of hearth product types. DOE notes that in general, these comments pertain to the determination of coverage process, not the energy conservation standards process, and so DOE will respond in full to these comments as part of the determination of coverage process. However, DOE acknowledges that certain comments on the December 2013 NOPD do have relevance for this NOPR and addresses them below and in section III.C in relevant part.

Multiple commenters in response to the December 2013 NOPD stated that the proposed definition for ''hearth product'' is too broad, and that a

reasonable energy conservation standard regulation could not be achieved for a definition that encompassed such a wide variety of products. (Hearth, Patio and Barbecue Association (HPBA), No. 5 at p. 6; National Propane Gas Association (NPGA), No. 7 at p. 2; RH Peterson, No. 8 at p. 2; Rasmussen, No. 9 at p. 2; Hearth & Home Technologies (HHT), No. 11 at p. 1; Empire, No. 12 at p. 1; Air-Conditioning, Heating, and Refrigeration Institute (AHRI), No. 15 at p. 2; Wolf Steel, No. 4 at p. 2; American Public Gas Association (APGA), No. 14 at p. 2) In response, DOE acknowledges that the hearth products market is broad and encompasses a wide range of products. DOE recognizes this as one product market and has proposed a definition accordingly. Nevertheless, DOE has chosen to conduct its analyses for this rulemaking using hearth product groups that have similar characteristics. For details about the physical characteristics of each product group for analysis, see chapter 5 of the NOPR TSD.

DOE seeks additional comment regarding its proposed definition for hearth products found in the December 2013 NOPD and this is identified as Issue 1 in section VII.E ''Issues on Which DOE Seeks Comment.''

B. Prescriptive Requirement for Standby Mode

As discussed previously, this NOPR proposes to adopt a prescriptive design requirement that would reduce hearth product energy consumption in standby mode. This design requirement would not affect energy consumption or efficiency in active mode. EPCA defines ''active mode'' energy consumption as the condition in which an appliance is connected to a main power source, has been activated, and provides one or more main functions. (42 U.S.C. 6295(gg)(1)(A)(i)) DOE notes that when the main burner of a hearth product is off, the product can no longer be considered in active mode. EPCA defines ''off mode'' as the condition in which the product is connected to its main power source and is not providing any standby or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii)) DOE has tentatively concluded that this occurs for hearth products when the main burner is not lit and, for models with continuously-burning pilots, when the pilot light is not lit.

EPCA defines ''standby mode'' energy consumption as the condition in which an appliance is connected to a main power source (in this case natural gas or propane connection) and facilitates the activation of other modes (including active mode) by remote switch, internal sensor, or timer, or serves other continuous functions. (42 U.S.C. 6295(gg)(1)(A)(iii)) DOE notes that the standing pilot may serve several continuous functions. The continuous pilot may provide a safety function by proving gas is lit before opening the valve for the main burner. In the case of an unvented hearth product, the standing pilot provides a means for ensuring that oxygen levels in the room remain at a safe level through incorporation of an oxygen depletion sensor. In the case of a millivolt gas valve, a standing pilot facilitates activation of active mode using a remote control; this is accomplished by the pilot light heating a thermopile, which produces a voltage difference, thereby allowing use with electronic controls. Therefore, DOE has concluded that the standing pilot qualifies as standby mode energy use.

DOE estimated the average annual amount of energy consumed by the main burner and by the standing pilot for each hearth product group.[18, 19] These estimates can be found in Table III.1. Active mode operation may use fossil fuels more intensively, but standby mode uses fossil fuels over significantly more hours on an annual basis.

TABLE III.1—AVERAGE ANNUAL ENERGY USE IN ACTIVE MODE (MAIN BURNER) AND STANDBY MODE (STANDING PILOT)

Hearth product analysis group	Main burner energy consumption (MMBtu/yr)	Standing pilot energy consumption (MMBtu/yr)
Vented Fireplaces, Inserts, and Stoves	5.19	3.99
Unvented Fireplaces, Inserts, and Stoves	4.47	3.52
Vented Gas Log Sets	8.31	3.13
Unvented Gas Log Set	4.53	2.29
Outdoor	7.02	3.52
Weighted Average	5.28	3.54

As shown in Table III.1, the standing pilot energy consumption makes up a significant portion of the overall energy consumption for hearth products. Further, the energy savings that can be achieved through disallowing standing pilot lights is greater than the savings that could be achieved through increasing the active mode efficiency via a performance standard. An active mode performance standard would only partially reduce the active mode energy consumption, whereas a prescriptive requirement to remove the standing pilot could be applied to all hearth product types and would reduce the standing pilot energy consumption to zero.

DOE also considered whether a maximum energy use performance standard would be appropriate for hearth products in active mode. DOE recognizes that hearth products are available for a wide range of input capacities depending on the consumer's needs. In general, the gas input is proportional to the size of the hearth product. A performance standard for hearth products that establishes a maximum energy use would likely eliminate certain sizes of hearth products from the market and could negatively impact the utility of the product.

DOE considered several individual technologies that could potentially reduce the energy consumption of hearth products as discussed in section IV.A.3. All of the technology options identified, except for the electronic ignition, pertain to active mode energy use. Based on manufacturer feedback, DOE tentatively concluded that five of the technologies considered (air-to-fuel ratio, burner port design, simulated log design, burner pan media or bead type, and reflective combustion zone surfaces) would result in immeasurable

[18] Description of the hearth product groups can be found in chapter 5 of the NOPR TSD.

[19] These values are calculated as the main burner operating hours multiplied by the average input capacity and the standing pilot operating hours multiplied by the average pilot light input rate, respectively. The operating hours can be found in chapter 7 of the NOPR TSD.

or negligible active mode energy savings. Two of the considered technologies—the circulating fan and the condensing heat exchanger—would only apply to a subset of hearth products. Also, these two technology options may only be implemented in those types of units that incorporate an enclosure to house the components (*i.e.,* they would not be applicable for gas log sets and certain types of outdoor hearths).

DOE has tentatively determined that all standby fossil fuel consumption would be eliminated by disallowing the use of standing pilots.[20] When turning on a gas hearth appliance, a pilot light is first ignited before gas flows to the main burner and is lighted. The pilot light generally may be constant-burning (''standing'') or intermittent. In the case of a standing pilot, the pilot light continues to consume gas even when the main burner is not consuming gas, unless the consumer chooses to shut off gas to the pilot as well.

The standby mode operation and energy use of hearth products are functions of ignition type. Ignition types for all hearth products fall under three categories: (1) Match-lit; (2), constant-burning or ''standing'' pilot; and (3) electronic ignition. For match-lit ignition systems, in order to ignite the burner, the user must manually turn on the gas flow and light the main burner with a match, lighter, or other device. After use, the user should manually turn off the gas valve, thereby reducing the fuel flow to zero when the product is not in operation. Therefore, match-lit products do not consume energy when not in active mode. For products with electronic ignitions, the most common approach is an intermittent pilot ignition. In this system, upon a call for the burner to ignite (either from the user or a thermostat), a spark lights a pilot, which in turn ignites the main burner. When the main burner shuts off, the pilot also shuts off, and, thus, any energy use in standby mode is electrical. DOE has tentatively determined this electrical consumption is *de minimis.*[20] For constant-burning pilots, the user must manually light the pilot each time it is extinguished, either manually with a match or through the use of a piezo-igniter. Then the pilot in turn lights the main burner. However, in this case, the pilot remains on after the main burner shuts off, awaiting future calls to ignite the burner. Therefore, hearth products with standing pilots continue to use gas typically at a rate between 700 and 1,200 Btu/h when the pilot light is not extinguished. Since match-lit hearth products consume no energy in standby mode and off mode and since the electrical consumption of electronic ignitions has been tentatively determined to be *de minimis,* disallowing the use of constant-burning pilot ignition systems would effectively eliminate all standby mode energy use for these products. These characteristics are common to the standby mode operation across all hearth products.

Therefore, while an energy efficiency performance standard for active mode and the technology options to achieve efficiency improvements could result in only a fractional reduction of energy consumption for a subset of hearth products, disallowing the standing pilot ignition type would eliminate all standby fossil fuel use for hearth products. Of the three general ignition types for hearth products—match-lit, standing pilot, and electronic ignition—only the standing pilot ignition systems contribute substantially to standby mode energy, so disallowing their use would effectively eliminate standby mode energy consumption of hearth products.

DOE also considered performance standards for standby mode. Since the standing pilot light is used for several functions, reducing the allowable use during standby mode would hinder these products from providing these functions. (Note: Electronic ignitions are capable of providing the same functions as standing pilot ignition systems, and so disallowing standing pilots will not eliminate this utility from the market.) DOE is also unaware, as stated in section IV.A.3, of technologies for substantially reducing the consumption of pilot lights. Additionally, DOE has determined that a design requirement would be more effective and easier to implement than a performance standard addressing standby mode. A performance standard would likely also require a test procedure to be established and would increase manufacturer burden due to testing requirements.

In summary, DOE has tentatively concluded the following:

(1) A potential maximum energy use performance standard for active mode would likely restrict the sizes of available hearth products, eliminating part of the market.

(2) The technology options available for reducing the active mode energy consumption of hearth products either result in immeasurable or negligible energy savings, or only apply to a subset of hearth products resulting in limited opportunity for energy savings;

(3) A prescriptive requirement that disallows the use of standing pilot ignition systems would eliminate all standby mode fossil fuel use,[20] which represents a large fraction of the overall energy use for hearth products;

(4) An performance standard for standby mode would be less effective than a prescriptive requirement disallowing standing pilot ignitions, and would result in more manufacturer burden due to testing requirements; and

(5) There are no technology options available to substantially reduce the energy consumption of pilot lights other than removing them; and

(6) There is no associated public health or safety issue associated with replacing any constant-burning pilot with an intermittent pilot ignition system for the hearth products identified in this proposal. (DOE also requests comment on this assumption and this is identified as Issue 2 in section VII.E ''Issues on Which DOE Seeks Comment.'')

For the reasons cited above, DOE has focused the analysis for this NOPR on a prescriptive requirement for standby mode energy use that would disallow the use of a constant-burning pilot light. DOE recognizes that an equivalent performance standard and test procedure could be proposed such that would measure the standby mode gas consumption and ensure it is zero. However, such a standard and accompanying test procedure would be unduly burdensome, since confirming that a hearth product does not have the components necessary for a standing pilot light ensures that there is no standby mode gas consumption.

C. Product Classes

In evaluating and establishing energy conservation standards, DOE generally divides covered products into classes by the type of energy used or by capacity or other performance-related feature that justifies a different standard for products having such feature. (See 42 U.S.C. 6295(q)) In deciding whether a feature justifies a different standard, DOE must consider factors such as the utility of the feature to users. *Id.* DOE may also consider other factors it deems appropriate when determining product classes. *Id.* DOE normally establishes different energy conservation standards for different product classes based on these criteria.

According to the proposed definition of ''hearth product'' in the December 2013 NOPD, a hearth product is a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern. 78 FR 79638, 79640 (Dec. 31, 2013). In the proposed definition, DOE

[20] See section III.I for discussion of electrical standby consumption for hearth products.

acknowledges that hearth products may serve one or more functions to the consumer, stating that a hearth product under the proposed definition ''presents a flame pattern (for aesthetics or other purpose)'' and ''*may* provide space heating.'' *Id.* DOE also suggested several examples of product types that would be covered under such a definition, including vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and vent-less hearth products.

DOE also received several comments that suggested an efficiency metric is unachievable or disadvantageous for decorative products or gas log sets. (HPBA, No. 5 at p. 9; American Gas Association (AGA), No. 6 at p. 2; RH Peterson, No. 8 at p. 3; Rasmussen, No. 9 at p. 2; Wolf Steel, No. 4 at p. 1; AHRI, No. 15 at p. 3–4) Wolf Steel also suggested labeling requirements that would clearly identify decorative and heater products. (Wolf Steel, No. 4 at p.4)

In addition to the December 2013 NOPD comments, DOE also examined current product offerings and product literature, performed teardown analyses (described in section IV.C.3.a), and conducted manufacturer interviews in an effort to better understand the market and feature sets unique to various hearth products to determine whether capacity or performance-related features would justify different standards. Based on this analysis, DOE has tentatively concluded the following and seeks comment (Issue 3 in section VII.E) regarding these conclusions:

(1) Within the hearth industry, there is no universally accepted definition or set of defining features or other physical characteristics for what constitutes different categories of hearth products. The distinction between products is sometimes, though not always, defined by whether the product is vented or unvented. However, even within these groupings, the same product is sometimes certified to multiple ANSI standards and in other cases apparently are certified to different ANSI standards. For example, unvented gas log sets are sometimes certified to the ANSI Z21.60 decorative gas-fired appliance standard [21] in addition to the ANSI Z21.11.2 unvented heater standard.[22] Vented products are often advertised with an AFUE or thermal efficiency rating, and may be certified to either or both the ANSI Z21.88 vented heater fireplace standard [23] or the ANSI Z21.50 vented fireplace standard.[24]

(2) Hearth products encompass a wide range of configurations to serve size, space, and other constraints. Fireplaces, freestanding stoves, and gas log sets vary widely in their physical characteristics, as well as input capacities.

(3) Gas log sets are installed in existing fireboxes and masonry fireplaces. Therefore, the manufacturer of a gas log set has virtually no control over an array of factors that would affect the efficiency of their product, including the firebox size, shape, material, and in the case of vented gas logs, the amount of draft.

DOE acknowledges that these issues represent challenges in establishing product classes (because differentiating between different types is often difficult due to the similarities of different types of hearths) or in developing an efficiency metric that would apply for all hearth products.

In comments in response to the December 2013 NOPD, HPBA stated ''under EPCA, a 'covered product' is a type of product defined by a common functional utility and for which a common efficiency descriptor can be applied.'' HPBA further stated: ''the premise that a 'covered product' must be defined by a common functional utility is the only premise that makes sense in EPCA's context, because the 'efficiency' of a product can be determined only by reference to its function.'' (HPBA, No. 5 at p. 7)

While DOE considered product classes in light of the issues presented above, these considerations pertain to the active mode operation of hearth products. As discussed in section III.B, DOE has tentatively concluded that a prescriptive requirement for standby mode (*i.e.,* requiring the removal of standing pilot ignition systems) would have the most energy savings potential and would apply across all types of hearth products. Thus, DOE's analysis focused on standby mode. DOE found considerable similarity across hearth products in their standby mode functionality, components, and energy use.

In summary, when DOE analyzed the hearth market to consider whether to establish product classes based on standby mode energy consumption, it found that there is a substantial similarity among hearth products of all types, in that the primary mechanism of energy consumption in standby mode is a constant-burning pilot. Therefore, DOE has tentatively concluded that the establishment of product classes is not necessary for the energy conservation standards proposed by this NOPR.

D. Test Procedure

In this NOPR, DOE is proposing to adopt a prescriptive design requirement for hearth products. Specifically, DOE is proposing to disallow the use of a continuously-burning pilot light in these products. DOE typically establishes test procedures by which products must be tested in order to certify compliance with an energy conservation standard. Because this proposed standard is a design requirement and not a performance standard (*i.e.,* minimum efficiency or maximum energy consumption), DOE has tentatively concluded that a test procedure is not required in order to determine compliance with the standard.

EPCA states, in relevant part, that an amended or new standard may not be adopted if a test procedure has not been established for the relevant product type or class. (42 U.S.C. 6295(o)(3)(A)) However, later sections of EPCA acknowledge that DOE may establish prescriptive design requirements that by nature would not require a test procedure. For determining compliance with standards, EPCA requires use of the test procedures and criteria prescribed in 42 U.S.C. 6293, except for design standards. (42 U.S.C. 6295(s)) EPCA also states that a test procedure need not be prescribed if one cannot be designed to reasonably measure energy efficiency, energy use, water use, or annual operating cost, and not be unduly burdensome to conduct. (42 U.S.C. 6293(d)(1)) EPCA requires that a determination be published in the **Federal Register** providing justification for such case. *Id.*

DOE contends that any test procedure to determine whether a hearth product has a continuously-burning pilot would be unduly burdensome to conduct in light of fact that the proposed standard is in the form of a prescriptive design requirement. While a test could be

[21] Latest version is ANSI Z21.60–2012, *Decorative gas appliances for installation in solid-fuel burning fireplaces* (Available at: *http://shop.csa.ca/en/canada/gas-fired-domestic-and-commercial-heating-equipment-and-air-conditioning/ansi-z2160-2012csa-226-2012/invt/27019512012*).

[22] Latest version is ANSI Z21.11.2–2013, *Gas-fired room heaters, volume II, unvented room heaters* (Available at: *http://shop.csa.ca/en/canada/gas-fired-domestic-and-commercial-heating-equipment-and-air-conditioning/ansi-z21112-2013/invt/27017312013*).

[23] Latest version is ANSI Z21.88–2014, *Vented gas fireplace heaters* (Available at: *http://shop.csa.ca/en/canada/gas-fired-domestic-and-commercial-heating-equipment-and-air-conditioning/ansi-z2188-2014csa-233-2014/invt/27016252014*).

[24] Latest version is ANSI Z21.50–2014, *Vented gas fireplaces* (Available at: *http://shop.csa.ca/en/canada/gas-fired-domestic-and-commercial-heating-equipment-and-air-conditioning/ansi-z2150-2014csa-222-2014-/invt/27020142014*).

conducted to measure standby mode fuel consumption (which would indicate the presence of a continuously-burning pilot if such consumption is greater than zero), such a test procedure is not required since removing standing pilots will effectively reduce standby mode gas consumption to zero. Further, determining whether a continuously-burning pilot is present on the unit can be easily assessed without testing through a review of operating instructions and physical inspection. Therefore, DOE has tentatively concluded that adoption of a test procedure is not required for establishing the proposed energy conservation standards for hearth products since that standard is based upon a design requirement. If DOE were to consider a performance standard for hearth products in the future, the agency would develop an appropriate test procedure at that time.

E. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency or reducing energy use are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this notice discusses the results of the screening analysis for hearth products, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy use for hearth products, using the design parameters for the least energy-intensive products available on the market or in working prototypes. The max-tech level that DOE determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the NOPR TSD.

F. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the products that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with standards (2021–2050).[25] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period.[26] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between the new standards case and the base case. The base case represents a projection of energy consumption in the absence of energy conservation standards, and it considers market forces and policies that affect demand for more-efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from potential standards for the products that are the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings on an annual basis in terms of primary (source) energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate the primary energy savings, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) most recent *Annual Energy Outlook* (*AEO*).

DOE also estimates full-fuel-cycle (FFC) energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy conservation standards. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1.

2. Significance of Savings

To adopt energy conservation standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all of the trial standard levels considered in this rulemaking, including the proposed standards (presented in section V.C), are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

G. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential energy conservation standard

[25] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[26] In the past, DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analyses.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

The LCC savings for the considered energy conservation levels are calculated relative to a base case that reflects projected market trends in the absence of new or amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. In contrast, the PBP is measured relative to the baseline product. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this notice would not reduce the utility or performance of the products under consideration in this rulemaking. DOE seeks comment regarding this tentative conclusion in Issue 4 of section VII.E ''Issues on Which DOE Seeks Comment.''

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from new or amended standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

New or amended standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE conducts an emissions analysis to estimate how standards may affect these emissions, as discussed in section IV.K. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described previously,

DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this proposed rule.

H. Compliance Date

EPCA typically establishes a lead time between the publication of new or amended energy conservation standards and the date by which manufacturers must comply with that standard. As specifically relates to hearth products, EPCA requires that any new or amended standard for a consumer product which the Secretary classifies as a covered product under 42 U.S.C. 6292(b) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard. (42 U.S.C. 6295(l)(2)) Accordingly, presuming DOE makes a final coverage determination, compliance with any standard for hearth products would be required five years after publication of the final rule.

I. Standby Mode and Off Mode

As discussed in section II.A of this NOPR, any final rule for amended or new energy conservation standards that is published on or after July 1, 2010 must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) As previously stated, DOE considers the use of a continuously-burning pilot light to be standby mode energy consumption, and that disallowing use of the constant-burning pilot ignition systems would eliminate gas consumption for hearth products in standby mode.

In addition, DOE has tentatively determined that there is no off mode gas consumption for a hearth product's ignition module. As indicated in section III.B, this energy conservation standards rulemaking not only addresses but focuses on standby mode fossil fuel energy use.

DOE notes that in some instances, certain hearth product ignition modules may also have some ancillary electrical energy consumption in standby mode and/or off mode (see chapter 7 of the TSD). However, DOE has tentatively determined that such standby mode and off mode electrical energy consumption is *de minimis,* and consequently, DOE did not analyze energy conservation standards to regulate electrical standby mode and off mode energy consumption. DOE seeks comment on this assumption, which is identified as Issue 5 in section VII.E, ''Issues on Which DOE Seeks Comment.''

IV. Methodology

This section addresses the analyses DOE has performed for this rulemaking with regard to hearth products. Separate subsections will address each component of DOE's analyses.

DOE used three spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and PBPs of potential standards. The second provides shipments forecasts and then calculates national energy savings and net present value impacts of potential standards. Finally, DOE assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM). All three spreadsheet tools are available online at the rulemaking portion of DOE's Web site: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx?productid=83.*

Additionally, DOE estimated the impacts on utilities and the environment that would be likely to result from potential standards for hearth products. DOE used the most recent version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses.[27] NEMS simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely-known energy forecast for the United States. NEMS offers a sophisticated picture of the effect of standards, because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this hearth products rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) quantities and types of products sold and offered for sale; (4) retail market trends; (5) regulatory and non-regulatory programs; and (6) technologies or design options that could improve the energy efficiency of the product(s) under examination. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Consideration of Products for Inclusion in This Rulemaking

In section III.A, DOE presented the scope of coverage for the rulemaking. Presently, hearth products are not covered consumer products. Section III.A discusses the scope and coverage for this rulemaking in the context of the notice of proposed coverage determination published in the **Federal Register** on December 31, 2013 (December 2013 NOPD). 78 FR 79638.

There is no statutory definition of ''hearth product.'' In the December 2013 NOPD, DOE proposed to adopt a definition of hearth product that means a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed.

In the December 2013 NOPD, DOE provided examples of several common hearth product types that would be covered under the proposed definition, including vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and vent-less hearth

[27] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview,* DOE/EIA–0581(2009) (October 2009) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

products. *Id.* For purposes of analysis, DOE separated hearth products into product groups. For more details on the product groups DOE used for its analysis, see chapter 5 of the NOPR TSD.

DOE recognizes that match-lit hearth products would be covered under the proposed definition for ''hearth product.'' However, since these products do not include a standing pilot ignition system, they would not be affected by the proposed prescriptive standard. Therefore, DOE did not include match-lit products in its analysis, and accordingly, the results of the analysis do not reflect impacts on match-lit products.

2. Product Classes

As discussed in section III.C, EPCA contains criteria that DOE follows when establishing product classes for setting different energy conservation standards for covered product types. (42 U.S.C. 6295(q)) DOE has tentatively concluded that, based on the information presented in section III.C, separate hearth product classes are not necessary for the prescriptive design requirement disallowing the use of standing pilots that is proposed in this NOPR.

In comments on the December 2013 NOPD, HPBA stated that there is no basis to assume that a ban on standing pilot lights could reasonably be implemented for the diverse range of products at issue. (HPBA, No. 5 at p. 9) With regards to this comment as it applies to product classes, it is unclear why a prescriptive requirement banning standing pilots could not be implemented across hearth product types. As previously stated, DOE surveyed product literature, performed teardown analyses, and conducted manufacturer interviews which revealed that the key components of electronic ignitions are shared by multiple product types. DOE found that alternatives to constant-burning pilot lights, namely match-lit and electronic ignition, were offered on all types of hearth systems, and that some of the alternatives (specifically electronic ignitions) would meet the safety requirements of those local jurisdictions where such requirements apply. Such evidence supports the conclusion that alternatives to constant-burning pilot lights are technologically feasible across the broad range of hearth products on the market. However, DOE also found that the implementation of alternatives to a constant-burning pilot are not implemented uniformly across all hearth types, given their slightly different characteristics. Thus, alternatives could be relatively more or less expensive to implement depending on the type of hearth product.

As shown in the engineering analysis of section IV.C below, while the prescriptive requirement would apply to all hearth products without establishing classes, DOE chose to analyze the most common hearth styles separately to more accurately assess the potential impacts of imposing a prescriptive requirement that would disallow the use of standing pilot ignition systems.

3. Technology Assessment

In a technology assessment, DOE identifies technologies and designs that could be used to improve the energy efficiency or performance of covered equipment. For this NOPR, DOE conducted a technology assessment to identify technologies or designs that could reduce the fuel consumption of hearth products. DOE has summarized the technologies and designs identified in Table IV.1. DOE seeks comment on its list of available technologies to reduce fuel consumption for hearth products; this is identified as Issue 6 in section VII.E, ''Issues on Which DOE Seeks Comment.'' See chapter 3 of the NOPR TSD for a detailed description of each technology option.

TABLE IV.1—TECHNOLOGIES DOE CONSIDERED FOR HEARTH PRODUCTS

Technology option	Description
Air-to-fuel ratio	Change in air-to-fuel ratio to achieve fuel savings.
Burner port design	Size, shape, and pattern of burner ports to reduce fuel consumption.
Simulated log design	Log style or size that allows use of less fuel for flame pattern.
Pan burner media/bead type	Sand, silica, or other media that achieves taller/more attractive flame with less fuel.
Reflective walls and/or other components inside combustion zone	Increase apparent size of flames without requiring additional fuel input. Potentially allows for the use of burners with smaller inputs.
Circulating blower	Circulate heated air more effectively.
Electronic ignition	Removes need for continuous standing pilot.
Condensing heat exchanger	Transfers more heat from flue gas into ambient air.

After identifying all potential technology options for reducing the energy consumption of hearth products, DOE performed the screening analysis (see section IV.B of this NOPR and chapter 4 of the NOPR TSD) on these technologies to determine which could be considered further in the analysis and which should be eliminated.

During manufacturer interviews, DOE inquired about these technologies or design considerations with regard to their prevalence and potential to achieve energy savings. With regard to the air-to-fuel ratio, burner port design, simulated log design, pan burner media, or reflective components, manufacturers found that these options resulted in either immeasurable or negligible energy savings. DOE received several responses during its manufacturer interviews that the design considerations DOE listed would have little or no bearing on reducing the input needed to achieve the required flame pattern. Manufacturers also indicated that an energy conservation standard based on one or more of these design options may inhibit hearth product manufacturers from providing a variety of overall aesthetic options. For these reasons, DOE did not consider these design options in the screening analysis.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the

standard, then DOE will consider that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have a significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology would have significant adverse impacts on health or safety, it will not consider this technology further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

DOE considered several design options to assess their potential to reduce the fuel consumption of the products that are the subject of this rulemaking, both in active mode and in standby mode. In the end, three technology options were considered in the screening analysis: (1) electronic ignition; (2), condensing heat exchangers; and (3) circulating blowers. All technologies considered in the technology assessment are listed in Table IV.1.See chapter 3 of the NOPR TSD for a detailed description of each technology option.

DOE has tentatively concluded that the electronic ignition, condensing heat exchanger, and circulating blower would not be screened out by any of the four screening criteria listed above. DOE notes that these technologies are currently commercially available for hearth products as well as other residential products and commercial equipment, and that their use does not pose any significant health or safety hazard.

With regards to impact of the electronic ignition on product availability, DOE notes that an electronic ignition provides the same functionality as a millivolt standing pilot gas valve, specifically the ability to be used with a remote control or thermostat. DOE has also tentatively determined that electronic ignition components are available for a wide range of gas-fired equipment beyond hearth products, and that the ability of hearth manufacturers to comply with the standard will not be restricted for lack of available components.

DOE seeks comment regarding the tentative conclusions reached in its screening analysis including impacts on product availability or product utility. This is Issue 4 in section VII.E ''Issues on Which DOE Seeks Comment.''

C. Engineering Analysis

This engineering analysis determines the change in manufacturing cost of hearth products associated with a prescriptive design requirement that disallows the use of a standing pilot. This relationship between manufacturer selling price and reduced energy consumption serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE has identified the following three methodologies to generate the manufacturing costs needed for the engineering analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse-engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for both standing pilot models and electronic ignition models, based on detailed data as to costs for parts and material, labor, shipping/packaging, and investment.

For this NOPR, DOE conducted the engineering analysis for hearth products using a combination of the design-option approach and the cost-assessment approach. DOE selected hearth models that represented a range of hearth configurations (*e.g.,* vented fireplaces, vented fireplace inserts, unvented fireplace inserts, vented gas log sets, and unvented gas log sets). In light of the analytical focus on a prescriptive requirement for standby mode energy consumption (as discussed in section III.B) representative models were chosen that would allow a direct comparison between standing pilot and electronic ignition systems. DOE gathered additional information using reverse-engineering methodologies, product information from manufacturer catalogs and manuals, and discussions with manufacturers and other experts on hearth products.

DOE generated a bill of materials (BOM) by disassembling products representing a range of hearth configurations, including vented and unvented fireplaces, inserts, and stoves, vented and unvented gas log sets, and outdoor products. The BOMs describe the product in detail, including all manufacturing steps required to make and/or assemble each part. Subsequently, DOE developed a cost model that converted the BOMs into manufacturer production costs (MPCs). By applying derived manufacturer markups to the MPCs, DOE calculated the manufacturer selling prices.

DOE seeks comment on its general approach to the engineering analysis. This is Issue 7 in section VII.E, ''Issues on Which DOE Seeks Comment.'' See chapter 5 of the NOPR TSD for additional details about the engineering analysis.

1. Representative Products for Analysis

For the engineering analysis, DOE reviewed the most common types of hearth products. Within each hearth type, DOE chose units for analysis that represent a cross-section of the hearth products market. As discussed in section IV.C.2 below, DOE eliminated the circulating blower and condensing heat exchanger technology options prior to the engineering analysis, since this rulemaking is focused on the standby mode energy use as described in section III.B. Consequently, the remaining technology—electronic ignition—became the main focus of DOE's analysis. DOE selected representative products for analysis that allowed DOE to determine whether any differences existed in ignition systems between hearth product types. DOE assumed that, should standing pilot ignitions be disallowed, manufacturers would convert standing pilot models to electronic ignition models rather than match-lit in order to provide the same level of safety, comfort, and functionality.

In order to inform the model selection process, DOE first surveyed product literature to determine whether clear differences in ignition systems existed between hearth products. Parts lists contained in installation and operation manuals for hearth products revealed that the key purchased components for electronic ignition systems—gas valves, pilot assemblies, and digital or analog control modules—are common across various hearth products, particularly for indoor fireplaces, fireplace inserts, stoves, and gas log sets. DOE also is aware that while gas log sets share these ignition components with other hearth product types, the nature of a gas log set (lacking a firebox or cabinet), means these components (particularly the gas valve and control module on electronic ignition systems) are more difficult to conceal. DOE seeks comment on the availability of these components and their applicability across hearth product

configurations. This is identified as Issue 8 in section VII.E, ''Issues on Which DOE Seeks Comment.''

DOE selected units that represented the hearth configurations in Table IV.2.

TABLE IV.2—REPRESENTATIVE HEARTH CATEGORIES FOR ENGINEERING ANALYSIS

Hearth product analysis category	Standing pilot valve	Electronic ignition system
Vented Fireplaces, Inserts, and Stoves	Millivolt	Intermittent Pilot Ignition.
	Millivolt	Intermittent Pilot Ignition.
Unvented Fireplaces, Inserts, and Stoves	Millivolt	Intermittent Pilot Ignition.
Vented Gas Log Sets	Manual	Intermittent Pilot Ignition.
Unvented Gas Logs Sets	Manual	Intermittent Pilot Ignition.
Outdoor Hearth Products	Manual	Intermittent Pilot Ignition (Hot Wire).
	Manual	Intermittent Pilot Ignition.

As stated in section IV.A.2, DOE is aware of the industry claim that different hearth products serve different functions and differ in design. However, this engineering analysis is limited to a determination of the difference in manufacturer production cost between ignition styles (standing pilot and electronic ignition). DOE has tentatively determined that there is no difference in ignition components between various types of vented hearth products. DOE believes that the same gas valves, control modules, and pilot assemblies are used interchangeably between vented fireplaces, inserts, and stoves. Therefore, the engineering analysis determined one MPC that would apply globally to vented fireplaces, inserts, and stoves. DOE seeks comment on the assumption that vented fireplaces, inserts, and stoves are equivalent in terms of ignition component costs. This is identified as Issue 9 in section VII.E, ''Issues on Which DOE Seeks Comment.''

Unvented hearth products differ from their vented counterparts in several respects; with regards to the ignition components, unvented hearth products require an oxygen depletion sensor. The oxygen depletion sensor consists of a thermocouple and a precisely calibrated pilot light. DOE analyzed a separate unvented fireplace, insert, and stove category and an unvented gas log set category in order to account for any potential cost difference for these components.

In addition, DOE considered that there are two main standing pilot valve types: manual and millivolt. The manual valve requires the user to manually open and close the valve and is, therefore, smaller, simpler, and cheaper. The millivolt gas valve uses a thermopile to generate a voltage difference such that the valve can be coupled with additional control systems, for example a remote control or thermostat. Since gas log sets are subject to physical space constraints that fireplaces, inserts, and stoves are not, DOE selected gas log sets with manual valves as representative of gas log sets with standing pilots. DOE selected models with millivolt gas valves as being representative of the fireplace, insert and stove vented and unvented categories.

The pilot light on manual or millivolt valves may be ignited using a match or using a piezo-electric or battery-powered sparker. Because the standing pilot can be ignited manually without the use of a sparker, and because the function of the pilot is not affected by how it is initially lit, DOE does not consider this sparker an integral component to the ignition system for the purposes of this analysis. Therefore, DOE did not include these costs in its analysis of the cost of a standing pilot ignition.

2. Design Options Analyzed

As indicated in section III.B, in light of the greater energy savings possible from a design requirement disallowing standing pilot ignitions as opposed to a performance standard, this rulemaking is focused on standby mode energy consumption. However, two of the three technologies that passed the screening analysis in Section IV.B (the condensing heat exchanger and circulating fan) are technologies that affect the active mode energy consumption of a subset of hearth products. DOE therefore eliminated the condensing heat exchanger and circulating fan prior to conducting its engineering analysis. Rather, DOE focused its engineering analysis on the impacts of a prescriptive design requirement to remove the standing pilot ignition system and replace it with a system that does not use a continuously burning pilot.

For each of the representative products, DOE estimated manufacturer production costs for standing pilot ignitions and electronic ignitions. DOE has tentatively determined that the pilot light is a feature that can potentially be present on any type of hearth product and is the primary mode of energy consumption for those hearth products. Neither public comment nor the manufacturer interview process revealed additional design options that could replace a standing pilot or substantially reduce the fuel consumption of the pilot light, save for a match-lit burner. (However, a match-lit burner would not comply with the American National Standards Institute (ANSI) safety standards, and, thus, was not considered as a direct replacement for standing pilot ignition systems.) DOE has also tentatively concluded that a performance standard for standby mode as opposed to a design requirement would be impractical, since DOE found that there were no additional design options that would reduce the fuel consumption of a pilot light. In addition, a performance standard would increase burden on manufacturers, as it would require testing to demonstrate compliance with such standard.

As previously stated, hearth products currently are not covered products. They would become covered products should the December 2013 NOPD result in a positive final determination of coverage. Therefore, there is currently no minimum efficiency standard in place for DOE to use as a baseline for comparison. In terms of standby mode operation, DOE has tentatively determined that the standing pilot ignition system represents the baseline design in terms of energy consumption. A standing pilot consumes the most energy during standby mode operation; match-lit and intermittent pilots both represent reductions in energy consumption compared to the standing pilot.

DOE understands that in those jurisdictions where match-lit systems are permissible, and particularly for gas log sets, match-light remains a viable

alternative to a standing pilot. A match-lit burner does not have an ignition system, and so DOE understands that the manufacturing cost of a match-lit burner is less than either a standing pilot or electronic ignition system. However, DOE recognizes that many jurisdictions require ANSI safety standard certification, and as such, a match-lit burner is not permissible. Since a match-lit system cannot serve as a replacement to current standing pilot models in these jurisdictions, electronic ignition would be the only viable alternative. The analysis, therefore, assumes that the representative change in cost for hearth products resulting from this proposed standard would be that associated with a change from a standing pilot to electronic ignition.

EPCA requires DOE to determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each class of covered products. (42 U.S.C. 6295(o)) As described previously (see section IV.A.2 and IV.B), none of the technologies identified by DOE to improve active mode efficiency could be applied to all hearth products, so DOE's analysis focused on reducing the standby mode energy consumption as providing the greatest opportunity for energy savings. In the case of a standing pilot, the maximum reduction in energy use possible is removal of the standing pilot entirely, and switching to either a match-lit or electronic ignition system. Both of these possibilities would be compliant with the proposed requirement to disallow the use of standing pilot ignition systems. This is the scenario DOE has chosen to analyze (see Table IV.2); as noted above, DOE is unaware of any other design options on the market that would substantially reduce the energy consumption of hearth products during standby operation.

3. Cost-Assessment Methodology

DOE identified intermittent pilot ignition as the relevant design option for reducing standing pilot energy consumption, as determined in the market assessment. Next, DOE selected products for the physical teardown analysis that represented the most common configurations of hearth products. DOE gathered the information from the physical teardown analysis to create bills of materials using a reverse engineering methodology. DOE then calculated the manufacturer production cost (MPC) for complete hearth products utilizing both design options, standing pilot and intermittent pilot ignition systems.

During the preparation and refining of the cost-efficiency comparison and MPCs for this NOPR, DOE also held interviews with manufacturers to gain insight into the hearth industry. DOE used the information gathered from these interviews, along with the information gathered through additional teardown analysis, to refine assumptions in the cost model. Next, DOE converted the MPCs into MSPs using publicly-available industry financial data, in addition to manufacturers' feedback. Further information on the analysis methodology is presented in subsections (a) through (g) of this section. For additional detail, see chapter 5 of the NOPR TSD.

a. Teardown Analysis

To assemble bills of materials (BOMs) and to calculate the manufacturing costs of the different components in hearth products, DOE disassembled several hearth products into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process referred to as a ''physical teardown.'' Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it. The teardown analysis for this engineering analysis included 14 physical teardowns.

DOE used the teardown analysis to create detailed, structured BOMs for each hearth type or style. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies), and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used as inputs placed into the cost model to calculate the MPC for the representative product for each product type and for each ignition type. See chapter 5 of the NOPR TSD for more details on the teardown analysis.

b. Cost Model

The cost model is a computer spreadsheet that converts the materials and components in the BOMs into dollar values based on the price of materials, average labor rates associated with manufacturing and assembling, and the cost of overhead and depreciation. To convert the information in the BOMs to dollar values for the NOPR analysis, DOE collected information on labor rates, tooling costs, raw material prices, and other factors. For purchased parts, the cost model estimates the purchase price based on volume-variable price quotations and discussions with manufacturers. For fabricated parts, the prices of raw metal materials (*e.g.,* tube, sheet metal) are estimated on the basis of 5-year averages (from July 2009 to June 2014).[28] The cost of transforming the intermediate materials into finished parts is estimated and confirmed through manufacturer interviews. Chapter 5 of the NOPR TSD describes DOE's cost model and definitions, assumptions, and estimates.

c. Manufacturing Production Cost

Once the cost estimate for each teardown unit was finalized, DOE totaled the cost of materials, labor, and direct overhead used to manufacture a product in order to calculate the manufacturer production cost for the NOPR. The total cost of the product was broken down into two main costs: (1) The full manufacturer production cost or MPC; and (2) the non-production cost, which includes selling, general, and administration (SG&A) expenses; the cost of research and development; and interest from borrowing for operations or capital expenditures. DOE estimated the MPC for both ignition designs (*i.e.,* standing pilot and intermittent pilot). After DOE incorporates all of the assumptions into the cost model, DOE calculates the different percentages of each aspect of production cost (*i.e.* materials, labor, depreciation, and overhead) that make up the total production cost. DOE uses these production cost percentages in the MIA (see section IV.J).

d. Cost Comparison

The result of this engineering analysis is a typical MPC for a unit with standing pilot in each product group and the added incremental cost of converting a standing pilot ignition to an electronic ignition. DOE determined five of these MPCs and incremental costs, each corresponding to one of the five hearth product groups DOE selected for analysis. Section IV.C.4 of this NOPR and chapter 5 of the NOPR TSD contain the MPCs and incremental costs.

e. Manufacturer Markups

DOE uses MSPs to conduct its downstream economic analyses. DOE calculated the MSPs by multiplying the manufacturer production cost by a mark-up and adding the product's

[28] Raw material prices were obtained from American Metals Market (Available at: *www.amm.com*) (Last accessed June 2014).

shipping cost. The production price of the product is marked up to ensure that manufacturers can make a profit on the sale of the equipment. DOE gathered information from manufacturer interviews to determine the mark-up used by different manufacturers. Using this information, DOE calculated an average mark-up of 1.45 for hearth products. DOE requests comments on the proposed mark-up, and this is identified as Issue 10 in section VII.E, ''Issues on Which DOE Seeks Comment.''

f. Manufacturer Interviews

Throughout the rulemaking process, DOE seeks feedback and insight from interested parties to improve the information used in its analyses. DOE interviewed manufacturers as a part of the NOPR manufacturer impact analysis (see section IV.J). During the confidential interviews, DOE sought feedback on all aspects of its analyses for hearth products. For the engineering analysis, DOE discussed the analytical assumptions, estimates, and purchased part prices with manufacturers. DOE considered all the information manufacturers provided when refining the cost model and assumptions. However, DOE incorporated equipment and manufacturing process figures into the analysis as averages in order to avoid disclosing sensitive information about individual manufacturers' products or manufacturing processes. More details about the manufacturer interviews are contained in chapter 12 of the NOPR TSD.

4. Results

The results from the engineering analysis are shown in Table IV.3. The cost model calculates an MPC for an associated annual production volume. As described in section IV.C.3.b, the cost model calculates manufacturer overhead and depreciation costs on a per-unit basis. Therefore, given the same number of employees, tooling, and equipment, a higher annual production volume will generally result in a lower MPC. Additionally, purchased parts scale non-linearly with volume: at low volumes, purchase part prices increase exponentially. Production volumes varied significantly across the segments of the hearth products industry. Replacing a standing pilot ignition system with an intermittent pilot ignition system largely means switching out one set of purchased part components with another. Purchased part component prices are dependent upon the volumes in which they are purchased, and as a result, the annual production volume for a given market segment could have a large impact on the cost of changing from a standing pilot ignition system to an intermittent pilot ignition system. As part of the confidential manufacturer interview process, DOE asked manufacturers to confirm costs and quantities particularly for purchase parts associated with the ignition system. DOE notes that this feedback is crucial in obtaining MPCs that accurately reflect typical industry values. Accordingly, DOE is seeking further feedback on the derived MPCs found in Table IV.3. This is Issue 10 in section VII.E, ''Issues on Which DOE Seeks Comment.''

TABLE IV.3—ESTIMATED TYPICAL MANUFACTURER PRODUCTION COSTS

Product category	Representative production volume	Standing pilot MPC	Added electronic ignition system (EIS) cost
Vented Fireplaces, Inserts, Stoves	10,000	$322	$28
Unvented Fireplaces, Inserts, Stoves	2,000	281	32
Vented Gas Log Sets	2,000	190	70
Unvented Gas Log Sets	5,000	208	56
Outdoor	3,000	210	55

The ''Standing Pilot MPC'' represents the cost to the manufacturer of the complete hearth product with a typical standing pilot ignition. The ''Added EIS Cost'' represents the incremental cost to the manufacturer of replacing the standing pilot ignition components with an electronic ignition. DOE has not included remote control or other user control features as part of either ignition system. While DOE acknowledges many electronic ignition systems are sold with a remote control and receiver, DOE does not consider these components necessary to the intermittent function of the pilot light. Therefore, DOE has not considered remote controls or remote control receivers in the ''Added EIS Cost.''

The standing pilot MPC derived for vented fireplaces, inserts and stoves is higher than for unvented for several reasons. The representative models used for the vented category are direct vent. These units typically include a glass viewing pane with spring-loaded clamps holding the viewing pane in place. They also include blowers that regulate airflow and moderate surface temperatures so that the unit can be installed flush against combustible building materials. Again, DOE estimates that the MPC of similarly-sized vented units are the same. DOE makes this assumption because product advertising and literature and manuals indicated that key components to the ignitions systems are shared across product types and throughout industry.

In the case of gas log sets, the analysis used standing pilot models with manual gas valves. These valves are less expensive than millivolt gas valves, and so the difference between standing pilot and electronic ignition system is higher for gas log sets than for fireplaces, inserts, and stoves.

The results from the engineering analysis were used in the LCC analysis to determine consumer prices for hearth products using both design options, standing pilot and electronic ignition. Using the manufacturer markup, DOE calculated the MSPs of the representative hearth products from the MPCs developed using the cost model.

Again, DOE seeks comment on the MPCs estimated for hearth products and this is identified as Issue 10 in section VII.E ''Issues on Which DOE Seeks Comment.'' Chapter 5 of the NOPR TSD provides the full list of MPCs and MSPs for each analyzed representative product group.

D. Markups Analysis

DOE uses distribution channel markups (*e.g.,* manufacturer markups, retailer markups, distributor markups, contractor markups) and sales taxes (where appropriate) to convert the manufacturer production cost estimates from the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. The markups are multipliers that are applied to the purchase cost at each stage in the distribution channel for hearth products. Before developing markups,

DOE defines key market participants and identifies distribution channels.

DOE characterized two distribution channels to describe how hearth products pass from the manufacturer to consumers: (1) Replacement market and (2) new construction. The replacement market channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → Consumer

The new construction distribution channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → General contractor → Consumer

The derivation of the manufacturer mark-up is discussed in section IV.C.3.e. To develop mark-ups for the parties involved in the distribution of the product, DOE utilized several sources, including: (1) The Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2013 Profit Report [29] to develop wholesaler mark-ups; (2) the Air Conditioning Contractors of America's (ACCA) 2005 financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry [30] to develop mechanical contractor mark-ups, and (3) U.S. Census Bureau 2007 Economic Census data [31] for the residential and commercial building construction industry to develop general contractor mark-ups.

For wholesalers and contractors, DOE develops baseline and incremental mark-ups based on the product mark-ups at each step in the distribution chain. The baseline mark-up relates the change in the manufacturer selling price of baseline models to the change in the consumer purchase price. The incremental mark-up relates the change in the manufacturer selling price of higher-efficiency models (the incremental cost increase) to the change in the consumer purchase price.

In addition to the mark-ups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[32] These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis.

Chapter 6 of the NOPR TSD provides further detail on the estimation of markups.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of pilot lights in residential hearth products in use in the United States in representative homes and to assess the energy savings potential in switching from standing pilot lights to intermittent pilot lights. DOE used information from teardowns and manufacturer literature to establish a representative input capacity for each hearth product pilot light option. These input capacities are consistent with comments received from stakeholders during the previous rulemaking.[33] DOE estimated the annual energy consumption of hearth product pilot lights across a range of climate zones for a sample of houses that use hearth products. The annual energy consumption includes the natural gas used by the standing pilot or the electricity used by the intermittent pilot. The annual energy consumption of hearth product pilot lights is used in subsequent analyses, including the LCC and PBP analysis and the national impacts analysis.

The energy use analysis seeks to capture the range of operating conditions for hearth products in the field (*i.e.,* as they are actually used by consumers). To determine the field energy use of hearth product pilot lights, DOE established a sample of households using hearth products from the Energy Information Administration's (EIA) 2009 Residential Energy Consumption Survey (RECS 2009).[34] DOE included in the sample all households who reported having a fireplace fueled by natural gas or liquefied petroleum gas (LPG).

DOE derived a range of possible operating hours for hearth products from field studies.[35] [36] The hearth product operating hours for each household were sampled based on typical behavior patterns and household-specific characteristics, such as heating load, length of heating season, and primary heating appliance. DOE established three ranges that correspond to three modes of consumer behavior: (1) Consumers who closely monitor the standing pilot light operation and only use it when starting the hearth product; (2) consumers who leave the standing pilot light on for the entirety of the heating season but turn it off for the remainder of the year; or (3) consumers who leave the standing pilot light on for the entire year. DOE represented each of these three modes with a continuous distribution of standing pilot operating hours. The field data suggest that more than half of natural gas-fired hearth product users leave the pilot on year round.

DOE used the household location data from RECS 2009 to establish the length of the heating season for each household by accounting for the National Oceanic and Atmospheric Administration (NOAA) weather data for that location.[37] To establish the maximum standing pilot operating hours during the heating season, DOE estimated the burner operating hours (BOH) of the hearth product from the annual space heating fuel use reported in RECS 2009. (Note that the pilot light remains on when the main burner is operating.)

RECS 2009 data also provided other information about the household that was used to further refine the analysis, such as primary heating appliance type, whether the hearth product was the primary heating appliance, fuel type of primary heating appliance, whether the hearth product was vented or vent-less, and whether the house has a chimney.

The pilot light operating hours, coupled with the data on fuel use per hour from the engineering analysis, allowed for the calculation of hearth products' pilot light annual energy usage. The average energy use of a hearth product's standing pilot is approximately 3.6 million Btu per year. To estimate the annual electricity used by an intermittent pilot, DOE used the representative burner input and the average duty cycle length to calculate the number of cycles, and a conservative estimate of 30 seconds on-time per ignition. DOE coupled the above value with the representative input of 50 W to derive electricity consumption. The average energy use of the intermittent

[29] Heating, Air Conditioning & Refrigeration Distributors International 2013 Profit Report (Available at: *http://www.hardinet.org/Profit-Report*) (Last accessed April 10, 2013).

[30] Air Conditioning Contractors of America (ACCA), *Financial Analysis for the HVACR Contracting Industry: 2005* (Available at: *http://www.acca.org/store/product.php?pid=142*) (Last accessed April 10, 2013).

[31] U.S. Census Bureau, *2007 Economic Census Data* (Available at: *http://www.census.gov/econ/*) (Last accessed April 10, 2013).

[32] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates, 2013 (Available at: *http://thestc.com/STrates.stm*) (Last accessed May 27, 2014).

[33] Docket Number EERE–2011–BT–STD–0047.

[34] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*) (Last accessed March, 2013).

[35] Hayden, A.C.S. Fireplace Pilots Take Gas Use Sky High. *Home Energy Magazine* (Jan. 1997). (Available at: *http://www.homeenergy.org/show/article/nav/hvac/page/28/id/1264*).

[36] Menkedick, John, Pam Hartford, Shawna Collins, Shawn Shumaker, and Darlene Wells, Hearth Products Meter Study (1995–1997), Rep. no. GRI–97/0298, Gas Research Institute (1997).

[37] National Oceanic and Atmospheric Administration, NNDC Climate Data Online (2009) (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*) (Last accessed July 29, 2014).

pilot option is less than one kWh per year.

In the RECS 2009 sample, 23 percent of households with hearth products used liquefied petroleum gas (LPG). Because LPG is a relatively expensive fuel, DOE understands that this subset of users closely monitors pilot light operation. Therefore, for households with LPG-fired hearth products, DOE assumed the pilot operating hours to be approximately equal to the hearth product BOH.

DOE seeks comment regarding its assumptions and methodology used in determining pilot light energy use and this is identified as Issue 11 in section VII.E ''Issues on Which DOE Seeks Comment.''

In evaluating the energy savings of the considered efficiency measure, DOE considered the heat input of the pilot light into the conditioned space. Eliminating the gas pilot would mean that some of the heat would not contribute to heating the home, which would mean that the main heating system would need to operate somewhat more, and the air conditioning system would operate slightly less in cases where the pilot is left on year-round. DOE based its analysis for vented hearth products on a report from the Canadian Centre for Housing Technology,[38] which quantified the fraction of energy consumed by the standing pilot light that is delivered into the conditioned space as useful heat. DOE used this study to estimate the ratio of energy consumed by the standing pilot light to the heat delivered to the conditioned space for each vented hearth product group. For unvented hearth products, DOE assumed that the majority of the heat from the pilot is input into the space. For outdoor units, none of the energy consumed by the pilot is considered useful heat. The additional energy use of the heating system was calculated for each sample household based on its estimated heating load and heating equipment. The reduction in air conditioning energy use was calculated in a similar manner. Inclusion of the indirect effects on heating and cooling systems reduces the gross savings from eliminating the standing pilot by approximately 20 percent on average.

It is important to note that DOE is proposing a prescriptive standard to eliminate the use of standing pilots in hearth products. As such, it would only reduce standby energy use, and would have no effect on hearth products' active-mode energy consumption. Therefore, the standard, if adopted, would not be expected to affect consumer usage of the product, and, thus, no rebound effect was applied to the energy use of hearth products.

DOE projected that household weights and household characteristics in 2021, the first full year of compliance with any new energy conservation standards for hearth products, would be the same as in RECS 2009. To characterize future new homes, DOE used a subset of RECS 2009 homes that were built after 2000.

DOE adjusted the energy use estimated for 2009 to normalize for weather by using 10-year heating degree-day (HDD) data from NOAA for each geographical region.[39] Historical monthly HDD data from NOAA for each geographical region was used to disaggregate the total energy use into monthly amounts, which allows DOE to apply monthly energy prices in the LCC and PBP analysis. See chapter 7 in the NOPR TSD for additional detail on the energy analysis for hearth product ignition devices.

DOE requests comment on the extent of assumed pilot light usage, specifically the percentages of consumers who operate their hearth product's standing pilot: (a) Year-round; (b) during the heating season; and (c) only when operating the unit. DOE also requests comment on the pilot operating hours of LPG-fired hearth products and determination of heat input from the pilot light into the conditioned space. This is Issue 12 in section VII.E, ''Issues on Which DOE Seeks Comment.''

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy conservation standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended standards on individual consumers usually includes a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- LCC (life-cycle cost) is the total consumer cost of an appliance or product, generally over the life of the appliance or product. The LCC calculation includes total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), equipment lifetime, and discount rate. Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance or product.
- PBP (payback period) measures the amount of time it takes consumers to recover the assumed higher purchase price of a more energy-efficient product through reduced operating costs. Inputs to the payback period calculation include the installed cost to the consumer and the first-year operating costs.

DOE analyzed the net effect of potential hearth product standards on consumers by calculating the LCC and PBP for each household for each considered pilot option. DOE measured the PBP and the change in LCC when switching from standing pilot to intermittent pilot in each hearth product type.

DOE performed the LCC and PBP analysis using a spreadsheet model combined with Crystal Ball (a commercially-available software program used to conduct stochastic analysis using Monte Carlo simulation and probability distributions) to account for uncertainty and variability among the input variables (*e.g.,* energy prices, installation cost, and repair and maintenance costs). It uses weighting factors to account for distributions of shipments to different building types and States to generate LCC savings by potential standard level. Each Monte Carlo simulation consists of 10,000 LCC and PBP calculations using input values that are either sampled from probability distributions and household samples or characterized with single point values. The analytical results include a distribution of 10,000 data points showing the range of LCC savings and PBPs for a given standards level relative to the base-case forecast (*i.e.,* without new energy conservation standards). In performing an iteration of the Monte Carlo simulation for a given consumer, the probability that a hearth product type and pilot option is chosen is based on the existing market share. If the chosen pilot light for the consumer is intermittent, the LCC calculation reveals that a consumer is not impacted by the standard level. Similarly, for those consumers who diligently operate their standing pilot lights, the LCC calculation results in either a net cost or no impact, depending on the specific simulation round. By accounting for consumers who already purchase more-efficient products or operate their units efficiently, DOE avoids overstating the

[38] Armstrong M.M., Swinton, M.C. and Szadkowski, F., Assessment of the Impact of a Natural Gas Fireplace on Heating Energy Consumption and Room Temperatures at the Canadian Centre for Housing Technology (March 31, 2010) Canada Mortgage and Housing Corporation (Available at: *http://chic.cmhc-schl.gc.ca/uhtbin/cgisirsi.exe/?ps=Ey6u7UxnJz/CHIC/17510006/60/502/X*).

[39] National Oceanic and Atmospheric Administration, NNDC Climate Data Online (2009) (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*) (Last accessed July 29, 2014).

potential benefits from increasing product energy conservation.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required. Since there is no DOE test procedure for hearth products, DOE based its rebuttable pay back analysis on the average energy use and costs calculated in the LCC analysis.

As discussed in section IV.E, DOE developed nationally representative household samples from 2009 RECS. For each sampled household, DOE determined the energy consumption of the hearth product pilot light and the appropriate energy prices in the area where the household is located.

DOE calculated the LCC and PBP for all hearth product consumers as if each were to purchase the product in the year that compliance with amended standards is required. At the time of preparation of the NOPR analysis, the expected issuance date for the final rule was in December 2015. For newly-covered products, EPCA prescribes a five-year period between the standard's publication date and the compliance date (42 U.S.C. 6295(l)(2)), which leads to a compliance date in December 2020. For purposes of its analysis, DOE modeled hearth products purchased on or after this date as if they operated for a full year beginning on January 1, 2021 and continuing thereafter.

As noted above, DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

1. Installed Cost

The primary inputs for establishing the total installed cost are the baseline consumer product price, standard-level consumer price increases, and installation costs (labor and material cost). Baseline consumer prices and standard-level consumer price increases were determined by applying mark-ups to manufacturer selling price estimates, including sales tax where appropriate. The installation cost is added to the consumer price to arrive at a total installed cost.

DOE found that the historic real (*i.e.,* adjusted for inflation) producer price index (PPI) for floor and wall furnaces, unit heaters, infrared heaters, and mechanical stokers from 1999 to 2013 has been relatively flat.[40] Hearth products are generally similar to the products in this PPI. In the absence of any data indicating a trend in hearth product prices, DOE elected to use a constant future price trend. DOE requests feedback on the assumption of a constant future price trend for hearth products. This is identified as Issue 13 in section VII.E, ''Issues on Which DOE Seeks Comment.''

Because the pilot light is a component of the hearth product, the installation costs for most installations was $0. In a fraction of installations, the intermittent pilot could necessitate an electrical connection, although many intermittent pilots are battery powered, and many hearth products already have electrical connections. For the cases where a new electrical connection is needed, DOE assumed a percentage of these needed electrical connection retrofits, with the probability increasing the older the house is. Similar assumptions were made for electrical grounding. For these cases needing retrofits, labor and material information was obtained from RS Means 2013 Residential Cost Data.[41] DOE requests feedback on the installation and retrofit assumptions regarding electrical connections and grounding. This is identified as Issue 14 in section VII.E, ''Issues on Which DOE Seeks Comment.''

2. Inputs to Operating Costs

The primary inputs for calculating the operating costs are product energy consumption, product efficiency, energy prices and forecasts, maintenance and repair costs, product lifetime, and discount rates. DOE uses discount rates to determine the present value of lifetime operating expenses. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective. Much of the data used for determining consumer discount rates comes from the Federal Reserve Board's triennial Survey of Consumer Finances.[42]

a. Energy Consumption

For each sample household, DOE determined the energy consumption for the hearth product ignition devices using the approach described in section IV.E. As noted previously, because the proposed standard concentrates on reduction in standby mode energy consumption, DOE does not anticipate a rebound effect in terms of consumer usage.

b. Energy Prices

Using the most current data from EIA on average energy prices in various States and regions,[43] [44] [45] DOE assigned an appropriate energy price to each household in the sample, depending on its location (see chapter 8 of the NOPR TSD for details). Average electricity and natural gas prices from the EIA data were adjusted using seasonal marginal price factors to derive monthly marginal electricity and natural gas prices. For a detailed discussion of the development of marginal energy price factors, see appendix 8–C of the NOPR TSD.

To estimate future prices, DOE used the projected annual changes in average residential natural gas, LPG, and electricity prices in the Reference case projection in *AEO 2014.*

c. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components in the hearth product that have failed,

[40] Series ID: PCU3334143334147 (Available at: *http://www.bls.gov/ppi/*).

[41] RS Means Company Inc., *RS Means Residential Cost Data* (2013) (Available at: *http://rsmeans.reedconstructiondata.com/*).

[42] Available at *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[43] U.S. Department of Energy—Energy Information Administration, *Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data* (2013) (Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia826.html*).

[44] U.S. Department of Energy—Energy Information Administration, *Natural Gas Navigator* (2013) (Available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*).

[45] U.S. Department of Energy—Energy Information Administration, *2012 State Energy Consumption, Price, and Expenditure Estimates (SEDS)* (2013) (Available at: *http://www.eia.doe.gov/emeu/states/_seds.html*).

whereas maintenance costs are routine annual costs associated with maintaining the proper operation of the equipment. DOE's review of product literature suggests that that no maintenance is required for the ignition device. DOE estimated that a 7 percent failure rate for ignition systems in hearth products based on repair rates for residential furnace ignition systems.[46] DOE estimated separate repair costs for each ignition system option as a function of the manufacturer price estimated in the engineering analysis (section IV.C). Due to the increased price of the intermittent pilot, the cost of repairing these units was approximately 44 percent higher than for units with standing pilots. See chapter 8 of the NOPR TSD for details. DOE requests feedback on the repair cost assumptions. This is identified as Issue 15 in section VII.E, ''Issues on Which DOE Seeks Comment.''

d. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE assumed that the lifetime of the ignition device is identical to the lifetime of the hearth product. DOE conducted an analysis of hearth product lifetimes using a combination of data on shipments and the hearth product stock (see section IV.G) and RECS 2009 data on the age of the hearth products in homes. The data allowed DOE to develop a survival function, which provides a range from minimum to maximum lifetime, as well as an average lifetime. The average lifetime estimated for hearth products is 16 years. Chapter 8 of the NOPR TSD provides further details on the methodology and sources DOE used to develop hearth product lifetimes. DOE requests feedback on the lifetime assumptions. This is identified as Issue 16 in section VII.E, ''Issues on Which DOE Seeks Comment.''

e. Discount Rates

In the calculation of LCC, DOE applies discount rates to estimate the present value of future operating costs. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective.

To establish discount rates for consumers, DOE's approach involved identifying all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010.[47] Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each class, is 4.2 percent.

See chapter 8 in the NOPR TSD for further details on the development of discount rates for the LCC analysis.

f. Base-Case Efficiency Distribution

To estimate the share of consumers affected by a potential energy conservation standard, DOE's LCC and PBP analysis considers the projected distribution (*i.e.,* market shares) of product efficiencies that consumers will purchase in the first compliance year in the base case (*i.e.,* the case without amended energy conservation standards).

For each of the hearth product groups, DOE estimated current market shares of the two pilot system types based on model information and manufacturer interviews. Because there are no data indicating trends in the market shares, DOE used the current shares to represent the market in 2021 (see Table IV.4).

TABLE IV.4—BASE-CASE EFFICIENCY DISTRIBUTION FOR HEARTH PRODUCT GROUPS IN 2021

Product group	Pilot system market share	
	Standing pilot (percent)	Intermittent pilot (percent)
Vented Fireplaces, Inserts, Stoves	42%	58%
Unvented Fireplaces, Inserts, Stoves	88	12
Vented Gas Log Sets	87	13
Unvented Gas Log Sets	94	6
Outdoor	52	48

For further information on DOE's estimation of the base-case efficiency distributions for hearth products, see chapter 8 of the NOPR TSD. DOE requests feedback on the base-case efficiency distribution. This is identified as Issue 17 in section VII.E, ''Issues on Which DOE Seeks Comment.''

3. Inputs to Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. The simple PBP does not account for changes in operating expense over time or the time value of money. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increase in total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation are the total installed cost of the product to the customer for each efficiency level and the average annual operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated

[46] Jakob, F.E., J.J. Crisafulli, J.R. Menkedick, R.D. Fischer, D.B. Philips, R.L. Osbone, J.C. Cross, G.R. Whitacre, J.G. Murray, W.J. Sheppard, D.W. DeWirth, and W.H. Thrasher, Assessment of Technology for Improving the Efficiency of Residential Gas Furnaces and Boilers, Volume I and II—Appendices (September 1994) Gas Research Institute. AGA Laboratories. Report No. GRI–94/0175.

[47] The Federal Reserve Board, Survey of Consumer Finances 1989, 1992, 1995, 1998, 2001, 2004, 2007, 2010 (Available at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html*).

under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered standard level, DOE determined the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standard would be required.

The results of DOE's PBP analysis are presented in section V.B.1.

G. Shipments Analysis

DOE uses forecasts of product shipments to calculate the national impacts of potential new or amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. Historical data indicate that shipments of hearth products are very sensitive to overall economic activity. Because DOE observed a strong correlation between housing starts and hearth product shipments, it used a 10-year average of the ratio of hearth product shipments to housing starts, along with the forecasted housing starts from *AEO 2014,* to project future hearth product shipments.

To estimate the impact of the considered standard on future hearth product shipments, DOE applied the same product price elasticity as it has used in many previous rulemakings for consumer products (see chapter 9 of the NOPR TSD). This elasticity relates an incremental increase in the price of hearth products to a decrease in shipments.

Regarding the potential for consumers to switch to other products, DOE recognizes that hearth products are purchased for the convenience of natural gas as a fuel source (as opposed to wood) and realistic flame characteristics (relative to electric-powered units). For this reason, DOE assumed that fuel switching among these products due to the imposition of the design standard would be negligible. DOE requests comment on this assumption, and this is identified as Issue 18 in Section VII.E, ''Issues on Which DOE Seeks Comment.''

DOE requests feedback on the methodology for hearth product shipment projections. This is identified as Issue 19 in section VII.E, ''Issues on Which DOE Seeks Comment.'' For details on the shipments analysis, see chapter 9 of the NOPR TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the net present value (NPV) from a national perspective of total consumer costs and savings expected to result from new or amended energy conservation standards at specific efficiency levels. DOE determined the NPV and NES for the potential standard levels considered for the hearth product types analyzed.

To make the analysis more accessible and transparent to all interested parties, DOE used a computer spreadsheet model (as opposed to probability distributions) to calculate the energy savings and the national consumer costs and savings from each TSL.[48] The NIA calculations are based on the annual energy consumption and total installed cost data from the energy use analysis and the LCC analysis. In the NIA, DOE forecasted the lifetime energy savings, energy cost savings, installed product costs, and NPV of consumer benefits over the lifetime of hearth products sold from 2021 through 2050.

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.F.2.f describes how DOE developed a base-case energy efficiency distribution for hearth products for the first full year of compliance (2021). DOE projected base-case efficiency assuming a constant efficiency distribution over the 30-year period. Historical trends of data for this product are not available, especially regarding the necessary ignition details. Therefore, DOE has estimated current standing pilot shipments and assumed those would be constant during the 30-year period starting from compliance (2021–2050).

To estimate the impact that energy conservation standards for hearth products (*i.e.,* a design requirement) may have in the year compliance becomes required, DOE used a ''roll-up'' scenario: (1) Products with efficiencies in the base case that do not meet a potential standard level would ''roll up'' to meet that standard level, and (2) products at efficiencies above the standard level under consideration would not be affected. After the year of compliance, all hearth products would utilize electronic ignition devices. For further details about the NIA efficiency distributions, see chapter 10 of the NOPR TSD.

[48] DOE's use of spreadsheet models provides interested parties with access to the models within a familiar context. In addition, the TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

1. National Energy Savings

To develop the NES, DOE calculates annual energy consumption of the considered products for the base case and then compares that to each potential standards case (TSL). DOE calculates the annual energy consumption for each case using the appropriate per-unit annual energy use data multiplied by the projected hearth product shipments for each year. As explained in section IV.E, DOE did not include a rebound effect for hearth products.

To estimate the national energy savings expected from appliance standards, DOE used a multiplicative factor to convert site electricity consumption (at the home) into primary energy consumption (the energy required to convert and deliver the site electricity). These conversion factors account for the energy used at power plants to generate electricity. The factors vary over time due to changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country) projected in *AEO 2014.* The factors that DOE developed are marginal values, which represent the response of the electricity sector to an incremental decrease in consumption associated with potential appliance standards. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and energy used to produce and deliver the fuels used by power plants. The approach used for this NOPR is described in appendix 10–B of the NOPR TSD.

2. Net Present Value of Consumer Benefit

The inputs for determining NPV are: (1) Total annual installed cost; (2) total annual savings in operating costs; (3) a discount factor to calculate the present value of costs and savings; (4) present value of costs; and (5) present value of savings. To develop the national NPV of consumer benefits from potential energy conservation standards, DOE calculates annual operating costs (energy costs and repair and maintenance costs) and annual installed costs for the base case and the standards cases. DOE calculates annual energy expenditures from annual energy consumption using forecasted energy prices in each year. DOE calculates annual product expenditures by multiplying the price per unit times the projected shipments in each year. As discussed in section IV.F.1, DOE assumed a constant future product price trend.

The aggregate difference each year between operating cost savings and increased installed costs is the net savings. DOE multiplies the net savings in future years by a discount factor to determine their present value. DOE estimates the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[49] The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. Circular A–4 also states that when the regulation primarily and directly affects private consumption, a lower discount rate is appropriate. The 3-percent real value represents the ''societal rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value. If one takes the rate that the average saver uses to discount future consumption as a measure of the social rate of time preference, then the real rate of return on long-term government debt may provide a fair approximation. Over the last thirty years, the rate has averaged around 3 percent in real terms on a pre-tax basis. Energy conservation standards for appliances and equipment affect both the use of capital and private consumption. It is noted that the discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective.

I. Consumer Subgroup Analysis

In analyzing the potential impacts of new or amended standards on consumers, DOE evaluated the impacts on identifiable subgroups of consumers that may be disproportionately affected by a national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. For this NOPR, DOE evaluated impacts of potential standards on two subgroups: (1) Senior households and (2) low-income households. The subgroup samples were identified from RECS 2009 data on income and age of household members. DOE used the LCC and PBP spreadsheet model to analyze the LCC impacts and PBP for those particular consumers at the considered standard. The consumer subgroup results for the hearth products TSL are presented in section V.B.1.b of this notice and in chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a Manufacturer Impact Analysis (MIA) to estimate the financial impact of an energy conservation standard on manufacturers of gas hearth products and to calculate the potential impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are data on the industry cost structure, product costs, shipments, and assumptions about markups and conversion expenditures. The key output is the industry net present value (INPV). DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in the INPV between a base case and each TSL (the standards case). The difference in INPV between the base case and a standards case represents the financial impact of energy conservation standards on gas hearth product manufacturers. DOE used different sets of assumptions (markup scenarios) to represent the uncertainty surrounding potential impacts on prices and manufacturer profitability as a result of standards. Different sets of assumptions will produce a range of INPV results. The qualitative part of the MIA addresses the proposed standard's potential impacts on manufacturing capacity and industry competition, as well as factors such as product characteristics, impacts on particular subgroups of firms, and important market and product trends. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the gas hearth industry. This industry characterization was based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. Specifically, DOE developed its industry profile using a combination of sources, including public information, such as Securities and Exchange Commission (SEC) 10–K reports,[50] market research tools (*e.g.,* Hoovers [51]), corporate annual reports, the U.S. Census Bureau's 2011 Annual Survey of Manufacturers (ASM),[52] and the 2010 Energy Conservation Standard Final Rule for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (75 FR 20112 (April 16, 2010)); information obtained through DOE's engineering analysis, life-cycle cost analysis, and market and technology assessment prepared for this rulemaking; and information obtained directly from manufacturers through interviews.

As part of Phase 1, DOE conducted structured, detailed interviews with a representative cross-section of manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to identify key issues or concerns and to inform and validate assumptions used in the GRIM. The industry profile developed as a result of Phase 1 research and interviews includes: (1) Further detail on the overall market and product characteristics; (2) financial parameters such as net plant, property, and equipment; selling, general and administrative (SG&A) expenses; research and development (R&D) expenses; cost of goods sold; and tax rates; and (3) trends in the number of

[49] OMB Circular A–4, section E, ''Identifying and Measuring Benefits and Costs'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/memoranda/m03–21.html*).

[50] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *www.sec.gov*).

[51] Hoovers Inc., Company Profiles, Various Companies (Available at: *www.hoovers.com/*).

[52] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at: *http://www.census.gov/manufacturing/asm/index.html*).

firms, market, and product characteristics.

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of an energy conservation standard on manufacturers of gas hearth products. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and/or possible changes in sales volumes. To quantify these impacts, DOE used the GRIM to perform a cash-flow analysis for the gas hearth industry using financial values derived during Phase 1 and the shipment scenario used in the NIA.

In Phase 3 of the MIA, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by energy conservation standards or that may not be represented accurately by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. DOE identified two subgroups for separate impact analyses: (1) Manufacturers of gas log sets; and (2) small businesses. The subgroup of gas log set manufacturers is discussed in section V.B.2.d of this notice, ''Impacts on Subgroups of Manufacturers,'' and the small manufacturer subgroup is discussed in section VI.B, ''Review Under the Regulatory Flexibility Act.'' Impacts on both subgroups are also addressed in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify changes in cash flow due to new standards that result in a higher or lower industry value. The GRIM uses a standard, annual cash-flow analysis using standard accounting principles that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from a potential energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2014 (the base year of the analysis) and continuing to 2050. Manufacturers incur capital and product conversion costs in the period between the date at which the rule is promulgated and the compliance date of an amended standard. To capture the impacts of these expenditures on industry finances, the MIA analysis period begins before the compliance year. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For gas hearth manufacturers, DOE used a real discount rate of 8.7 percent, which was derived from industry financial information and then modified according to feedback received during manufacturer interviews.

After calculating industry cash flows and INPV, DOE compared changes in INPV between the base case and the standards case. The difference in INPV between the base case and the standards case represents the financial impact of that potential energy conservation standard on manufacturers. As discussed previously, DOE collected information on key GRIM inputs from a number of sources, including publicly-available data and confidential interviews with manufacturers (described in the next section). The GRIM results are shown in section V.B.2. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components, which are typically more costly than baseline components. The changes in the manufacturer production costs (MPCs) of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making these equipment cost data key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from its teardown analysis, described in chapter 5 of the TSD, to disaggregate the MPCs into material, labor, and overhead costs. These costs were shared with manufacturers and revised to incorporate their feedback.

Shipments Forecasts

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by product group and ignition type. Changes in sales volumes and product mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipments forecasts derived in the shipments analysis for the period 2014 (the base year) to 2050 (the end year of the analysis). The NIA shipments forecasts assume price elasticity of demand, whereby shipment volumes in the standards case decline relative to the base case as MPCs rise and, in doing so, drive up end-user purchase prices. See section IV.G. above and chapter 9 of the NOPR TSD for additional details.

Product and Capital Conversion Costs

An energy conservation standard would cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with a design standard eliminating standing pilot lights. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, certification, marketing, and other non-capitalized costs necessary to make products comply with an energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

To evaluate the level of capital conversion expenditures manufacturers would likely incur to comply with a potential energy conservation standard, DOE used manufacturer interviews to gather data on the anticipated level of capital investment that would be required to adapt to a design standard eliminating standing pilot lights. Based on manufacturer feedback, DOE estimated an average capital expenditure per manufacturer, which it then applied to the entire industry. DOE validated manufacturer comments through estimates of capital expenditure requirements derived from the product teardown analysis and engineering analysis described in chapter 5 of the NOPR TSD.

DOE assessed the product conversion costs by integrating quantitative and qualitative data. DOE considered feedback from manufacturers regarding potential product conversion costs and validated those numbers against engineering estimates of redesign efforts. Manufacturer data were aggregated to better reflect the industry as a whole and to protect confidential information.

DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this notice. For additional information on the estimated product and capital conversion costs, see chapter 12 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

Markup Scenarios

Manufacturer selling prices (MSPs) include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of potential energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the inputted MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels for the product in question. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly-available financial information for manufacturers of gas hearth products, as well as comments received during manufacturer interviews, DOE assumed the average non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.45 for all gas hearth products.

Because this markup scenario assumes that manufacturers would be able to maintain their gross margin percentage markups as production costs increase in response to an energy conservation standard, it represents a high bound to industry profitability, as manufacturers are able to fully pass through additional costs due to standards to consumers.

In the preservation of per unit operating profit scenario, manufacturer markups are set so that operating profit one year after the compliance date of the energy conservation standard is the same as in the base case on a per-unit basis. Under this scenario, as the costs of production increase under a standards case, manufacturers are generally required to reduce their markups to a level that maintains base-case operating profit per unit. The implicit assumption behind this markup scenario is that the industry can only maintain its operating profit in absolute dollars per unit after compliance with the new standard is required. Therefore, operating margin in percentage terms is reduced between the base case and standards case. DOE adjusted the manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the base case. This markup scenario represents a low bound to industry profitability under an energy conservation standard, because manufacturers are not able to fully pass through to consumers the additional costs due to standards.

c. Manufacturer Interviews

As part of MIA, DOE discussed the potential impacts of an energy conservation standard with manufacturers of gas hearth products. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the industry. All interviews provided information that DOE used to evaluate the impacts of potential energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

In interviews, DOE asked manufacturers to describe their concerns with the rulemaking regarding gas hearth products. The following section highlights manufacturer concerns that helped to shape DOE's understanding of potential impacts of an energy conservation standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries. The following sections highlight the most significant of manufacturers' statements, although all concerns expressed by manufacturers were considered in DOE's analysis.

Impacts on Profitability

According to manufacturers, units with electronic ignition systems are more expensive to manufacture than units with standing pilot lights. Manufacturers indicated that purchasing components for electronic ignition systems increases per-unit production costs and, by extension, raises the retail price of products. Manufacturers stated that by driving up their cost of goods sold as well as the end-user purchase price, a standard eliminating standing pilot lights could lead to a drop in consumer demand. Because gas hearth products are not typically purchased exclusively for heating purposes but rather are valued by customers for their aesthetic appeal, manufacturers indicated that higher prices could depress demand if customers decide the decorative benefit of gas hearth products does not merit the higher costs. A fall in sales could, in turn, impact industry profitability.

Additionally, manufacturers stated that shipments of gas hearth products declined significantly over the last decade, in part due to the economic recession and a related decline in new-home construction. Several manufacturers forecast steady or declining shipments in future years absent an energy conservation standard. Those interviewed generally argued that if an energy conservation standard raises the price of gas hearth products, depresses demand, and reduces profitability, it could drive manufacturers to exit the market.

Impacts on Industry Competition

Small manufacturers expressed concern that an energy conservation standard for gas hearth products could alter the competitive dynamics of the market, favoring a subset of large manufacturers over their small-business competitors. Based on economies of scale, manufacturers that produce gas hearth products at high volumes are typically able to source components at lower per-unit prices than manufacturers that produce at lower volumes. In general, manufacturers of gas hearth products do not manufacture the components used for electronic ignition systems in-house. Rather, they source them from component suppliers. In interviews, manufacturers indicated that large manufacturers with high production volumes are able to source these components at relatively low cost. Small manufacturers with lower production volumes, in contrast, noted that the comparatively high cost they would incur to purchase electronic ignition system components would

exacerbate the pricing advantage of large manufacturers and could lead to loss of price competitiveness for smaller players in the market.

Impacts on Product Performance

Multiple manufacturers stated that electronic ignition systems represent a more complicated and less reliable technology than standing pilot lights. These manufacturers indicated that units with electronic ignition systems often require more effort to repair and maintain. One manufacturer stated that electronic ignition systems account for a small fraction of their sales but the vast majority of their service calls, and several manufacturers suggested higher costs of maintaining units with electronic ignition systems compared to standing pilot lights. Additionally, several manufacturers suggested that electronic ignition systems are not as well suited to cold climates, where standing pilot lights may help to maintain buoyancy through the flue and to prevent condensation from building up on glass.

K. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and mercury (Hg) from potential amended energy conservation standards for hearth products. In addition, DOE estimated emissions impacts in production activities (extracting, processing, and transporting fuels). These are referred to as ''upstream'' emissions. Together, these emissions account for the FFC. In accordance with DOE's FFC Statement of Policy (76 FR 51281 (Aug. 18, 2011) as amended at 77 FR 49701 (August 17, 2012)), the FFC analysis also includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases. The combustion emissions factors and the method DOE used to derive upstream emissions factors are described in chapter 13 of the NOPR TSD. The cumulative emissions reduction estimated for hearth products is presented in section V.B.6.

Today's proposed standard would reduce use of fuel at the site and slightly increase electricity use. DOE accounted for the associated reduction in site emissions and the upstream emissions associated with natural gas use, which include fugitive emissions. DOE also estimated the change in power sector emissions and the upstream emissions associated with electricity generation.

DOE primarily conducted the emissions analysis using emissions factors for CO_2 and most of the other gases derived from data in *AEO 2014.* Combustion emissions of CH_4 and N_2O were estimated using emissions intensity factors published by the U.S. Environmental Protection Agency (EPA) in its GHG Emissions Factors Hub.[53] Site emissions of CO_2 and NO_X were estimated using emissions intensity factors from a separate EPA publication.[54] DOE developed separate emissions factors for site, power sector, and upstream emissions. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of the greenhouse gas by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[55] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

EIA prepares the *AEO* using the NEMS. Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2014* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2013.

Because the on-site operation of gas hearth products requires use of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[56] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR.[57] The court ordered EPA to continue administering CAIR. The emissions factors used for today's NOPR, which are based on *AEO 2014,* assume that CAIR remains a binding regulation through 2040.[58]

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Beginning in 2016, however, SO_2 emissions will decline significantly as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2014* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2

[53] See *http://www.epa.gov/climateleadership/guidance/ghg-emissions.html.*

[54] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources (1998) (Available at: *http://www.epa.gov/ttn/chief/ap42/index.html).*

[55] IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

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

[57] See *EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[58] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion. The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR. See *EPA* v. *EME Homer City Generation*, No 12–1182, slip op. at 32 (U.S. April 29, 2014). Because DOE is using emissions factors based on *AEO 2014* for today's NOPR, the NOPR assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of SO_2 emissions.

emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is likely that the increase in electricity demand associated with the highest hearth product efficiency levels would increase SO_2 emissions.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[59] Thus, it is unlikely that the increase in electricity demand associated with the considered hearth product standard would increase NO_X emissions in those States covered by CAIR. However, it would be expected to slightly increase power sector NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions increases for these States. As shown in section V.B.6, however, the decrease in site NO_X emissions is much larger than the slight increase in power sector NO_X emissions.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, the increase in electricity demand associated with the considered hearth product standard would be expected to slightly increase Hg emissions. DOE estimated mercury emissions using emissions factors based on *AEO 2014*, which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from the TSL considered. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council[60] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort

[59] CSAPR also applies to NO_X, and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X is slight.

[60] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*, National Academies Press: Washington, DC (2009).

were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects, although preference is given to consideration of the global benefits of reducing CO_2 emissions.[61] Table IV.5 presents the values in the 2010 interagency group report,[62] which is reproduced in appendix 14–A of the NOPR TSD.

TABLE IV.5—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2049	15.7	44.9	65.0	136.2

The SCC values used for today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature. Table IV.6 shows the updated sets of SCC estimates from the 2013 interagency update[63] in five-year increments from 2010 to 2050. Appendix 14–B of the NOPR TSD provides the full set of values. The central value that emerges is the average SCC across models at a 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.6—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2010	11	32	51	89
2015	11	37	57	109

[61] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[62] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[63] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

TABLE IV.6—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050—Continued

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2049	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report, adjusted to 2013$ using the Gross Domestic Product price deflator. For each of the four SCC cases specified, the values used for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

As noted previously, DOE has taken into account how the considered energy conservation standard would reduce site NO_X emissions nationwide and increase power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $476 to $4,893 per ton in 2013$.[64] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,684 per short ton (in 2013$) and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each trial standard level. The analysis is based on published output from NEMS, which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. Each year, NEMS is updated to produce the *AEO* reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses those published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

Employment impacts from new or amended energy conservation standards include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly

[64] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2006) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf*).

publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[65] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase because of shifts in economic activity resulting from standards for hearth products.

For the standard considered in this NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies, Version 3.1.1 (ImSET).[66] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR, DOE used ImSET only to estimate short-term (through 2026) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to a potential energy conservation standard for hearth products. Additional details regarding the analyses conducted by DOE are contained in the publicly-available NOPR TSD supporting this notice.

A. Trial Standard Levels

DOE typically considers multiple TSLs for a standards rulemaking. However, the hearth products rulemaking is proposing a prescriptive standard that would disallow the use of continuously-burning pilots, thereby largely eliminating the standby mode energy consumption of these products. The analysis is considering an established alternative to a standing pilot, which is an intermittent pilot. Other options that are present in other combustion appliances, such as hot surface ignition, are virtually non-existent in the hearth product market primarily due to the increased cost and additional engineering challenges. Therefore, hearth products have only one TSL, which reflects a standard that would disallow the use of a standing pilot. For the purposes of this analysis, TSL1 assumes that all covered hearth products would use an intermittent pilot (see Table V.1).

TABLE V.1—TRIAL STANDARD LEVEL FOR HEARTH PRODUCTS

Ignition type	TSL 1
Standing Pilot	0%
Intermittent Pilot	100%

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts of the proposed rule on hearth products consumers by looking at the effect on the LCC and the PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price typically increases, and (2) annual operating costs typically decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate.

Table V.2 shows the LCC and PBP results for the considered TSL. The simple payback is measured relative to the baseline product, and reflects the number of years it would take for the consumer to recover the increased costs of higher-efficiency products as a result of operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Table V.3 shows the LCC savings relative to the base case in the compliance year. Additionally, 23 percent of consumers experience net cost because their standing pilot lights have relatively low hours of operation, and thus achieve modest energy savings from using an intermittent pilot ignition.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HEARTH PRODUCTS

TSL	Design	Average costs 2013$				Simple payback years	Average lifetime years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Intermittent Pilot	$268	$15	$174	$442	2.9	15.0

Note: The results are calculated assuming that all consumers use products with that design. The simple PBP is measured relative to the baseline product.

[65] *See* Bureau of Economic Analysis, ''Regional Multipliers: A Handbook for the Regional Input-Output Modeling System (RIMS II),'' U.S. Department of Commerce (1992).

[66] M.J. Scott, O.V. Livingston, P.J. Balducci, J.M. Roop, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

TABLE V.3—LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR HEARTH PRODUCTS

TSL	Design	Life-cycle cost savings	
		% of consumers that experience net cost	Average savings *2013$
1	Intermittent Pilot	23%	$165

*The calculation includes households with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impacts of the considered standard on senior-only households. The average LCC savings and simple PBPs for senior-only households are shown in Table V.4. The LCC savings are somewhat lower for the senior-only subgroup. Chapter 11 of the NOPR TSD presents detailed results of the consumer subgroup analysis.

TABLE V.4—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, HEARTH PRODUCTS

TSL	Average LCC savings 2013$		Simple payback period years	
	Senior-only	All consumers	Senior-only	All consumers
1	$121	$165	3.5	2.9

c. Rebuttable Presumption Payback Period

As discussed in section III.G.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. Accordingly, DOE calculated a rebuttable-presumption PBP for the proposed hearth products standard based on the average energy use and costs calculated in the LCC analysis. DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment, as required by EPCA under 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V.5 shows the rebuttable-presumption PBP for the considered TSL for hearth products.

TABLE V.5—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR HEARTH PRODUCTS

Product	Rebuttable presumption payback (years)
	TSL 1
Hearth Products	2.3

2. Economic Impacts on Manufacturers

DOE performed a manufacturer impact analysis (MIA) to estimate the impact of an energy conservation standard on manufacturers of gas hearth products. The following section describes the expected impacts on manufacturers of a ban on standing pilot lights. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

Table V.6 and Table V.7 depict a range of estimated financial impacts (represented by changes in industry net present value, or INPV) of an energy conservation standard on manufacturers of gas hearth products, as well as the conversion costs that DOE expects manufacturers would incur to comply with the standard.

As discussed in section IV.J.2, DOE modeled two different markup scenarios to evaluate the range of cash flow impacts on the gas hearth industry: (1) The preservation of gross margin percentage markup scenario; and (2) the preservation of per-unit operating profit markup scenario. Each of these scenarios is discussed immediately below.

To assess the less severe end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform ''gross margin percentage'' markup is applied. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the standards case.

To assess the more severe end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which reflects manufacturer concerns surrounding their inability to maintain margins as manufacturing production costs increase to comply with an energy conservation standard. In this scenario, as manufacturers incur higher costs of goods sold and make the investments necessary to produce new standards-compliant products, their percentage markup decreases. Operating profit does not change in absolute dollars but decreases as a percentage of revenue.

As noted in the MIA methodology discussion (see section IV.J.2), in addition to markup scenarios, the MPC, shipments, and conversion cost assumptions also affect INPV results.

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry values under an energy conservation standard. In the following discussion, the INPV results refer to the difference in industry value between the base case and the standards case that results from the sum of discounted cash flows from the base year 2014 through 2050, the end of the analysis period. To provide perspective on the short-run cash flow impact, DOE includes in the discussion of results a comparison of free cash flow between the base case and the standards case in the year before the standard would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the base case.

Table V.6 presents estimated financial impacts under the preservation of gross margin percentage markup scenario, and

Table V.7 presents impacts under the preservation of per-unit operating profit markup scenario. Estimated conversion costs and free cash flow in the year prior to the compliance date of the standard do not vary with markup scenario.

TABLE V.6—MANUFACTURER IMPACT ANALYSIS RESULTS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	Base case	Standards case *
INPV	2013$M	125.3	125.8
Change in INPV	2013$M	.....	0.5
	%	.....	0.4
Product Conversion Costs	2013$M	.....	7.8
Capital Conversion Costs	2013$M	.....	0.9
Total Conversion Costs	2013$M	.....	8.7
Free Cash Flow (base case = 2020)	2013$M	10.9	8.2
Change in Free Cash Flow	2013$M	.....	(2.6)
	%	.....	(24.0)

* Parentheses indicate negative values

TABLE V.7—MANUFACTURER IMPACT ANALYSIS RESULTS UNDER THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Standards case *
INPV	2013$M	125.3	122.0
Change in INPV	2013$M	.....	(3.3)
	%	.....	(2.6)
Product Conversion Costs	2013$M	.....	7.8
Capital Conversion Costs	2013$M	.....	0.9
Total Conversion Costs	2013$M	.....	8.7
Free Cash Flow (base case = 2020)	2013$M	10.9	8.2
Change in Free Cash Flow	2013$M	.....	(2.6)
	%	.....	(24.0)

DOE estimates the impacts of an energy conservation standard on INPV to range from −$3.3 million to $0.5 million, or a change of −2.6 percent to 0.4 percent. Industry free cash flow is estimated to decrease by $2.6 million, or a change of −24.0 percent compared to the base-case value of $10.9 million in the year before the compliance date (2020).

The capital and product conversion costs required to bring non-compliant models into compliance with standards drive the lower-bound negative INPV results at this level. To bring all non-compliant products into compliance, DOE estimates total industry conversion costs of $8.7 million. This estimate assumes that all non-compliant models (*i.e.,* models with standing pilot lights) would be redesigned to accommodate electronic ignition systems. This represents a conservative assumption, as manufacturers may choose to discontinue some models with standing pilot lights. Models already available with the option of electronic ignition would not require any one-time conversion costs by the manufacturer in order to achieve compliance.

During interviews, some manufacturers expressed concern that an energy conservation standard could pose a significant conversion cost burden with regard to labeling requirements. Under Canadian law, manufacturers must test and label gas fireplaces, stoves, and inserts with a fireplace efficiency (FE) rating. If a Federal energy conservation standard mandated an alternative efficiency metric for hearth products (*e.g.,* AFUE), manufacturers indicated they could be required to hold separate SKUs for the Canadian and U.S. markets in order to comply with each jurisdiction's requirements. However, because the proposed standard is a prescriptive design requirement and does not establish a minimum efficiency rating or require products to be labeled with a particular efficiency metric, DOE did not factor the cost of holding duplicate SKUs into its conversion cost model.

Beyond conversion costs, the change in MPCs also impact manufacturer financials. The cost to manufacturers of producing equipment with electronic ignition systems tends to be greater than the cost of producing equipment with standing pilot lights. A higher per-unit manufacturer production cost could, in turn, result in a higher per-unit retail price to the end user. In interviews, manufacturers expressed concerned that higher prices could lead to a change in industry shipments. The increase in MPC and the change in pricing to the manufacturer's first customer are reflected in the GRIM and in the INPV results. Shipments used in the GRIM are consistent with the Shipments Analysis, presented in section IV.G, which includes assumptions regarding price elasticity of demand.

DOE requests feedback on the expected total conversion costs for the industry. This is identified as Issue 20 in section VII.E, ''Issues on Which DOE Seeks Comment.''

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of energy conservation standards on direct employment in the gas hearth industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the base case and the standards case from 2014 through 2050. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers,[67] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic direct employment levels. Labor expenditures related to manufacturing of the product are a function of the labor

[67] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at *http://www.census.gov/manufacturing/asm/index.html*).

intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2011 Annual Survey of Manufacturers). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling a product within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. The direct employment impacts calculated represent a range of potential changes in the number of production workers resulting from an energy conservation standard for hearth products, as compared to the base case.

To estimate an upper bound to employment change, DOE assumes all domestic manufacturers would continue producing the same scope of covered products in the U.S. and would not move production to foreign countries. To estimate a lower bound to employment, DOE assumes manufacturers would not redesign any non-compliant models and that there would be a proportionate loss of production employment.

Table V.8 shows the estimated range of impacts of a potential energy conservation standard on U.S. production workers of gas hearth products. In the base case, DOE estimates that the gas hearth industry would employ 1,565 domestic production workers in 2021, the first full year of compliance. DOE estimates that 86 percent of gas hearth products sold in the United States are manufactured domestically.

TABLE V.8—POTENTIAL CHANGES IN THE TOTAL NUMBER OF PRODUCTION WORKERS IN THE GAS HEARTH INDUSTRY IN 2021

	Base case	Standards case
Domestic Production Workers in 2021	1,565	657 to 1,514.
Potential Changes in Domestic Production Workers in 2021*		(908) to (51).

* DOE presents a range of potential employment impacts. Parentheses indicate negative values.

The less severe end of the range of potential employment impacts estimates a loss of 51 domestic production jobs in 2021 in the standards case. This assumes manufacturers would continue to produce the same scope of covered products within the United States. However, because the shipment model predicts a decline in shipment volumes under an energy conservation standard, DOE estimates a related reduction in labor inputs and employment.

The more severe end of the range represents the maximum decrease in total number of U.S. production workers that could be expected to result from an energy conservation standard. For the hearths industry, DOE assumed a worst-case scenario in which all products sold with standing pilot lights in the base case would be eliminated in the standards case and would not be replaced by any additional sales of compliant products. DOE then assumed industry labor requirements would shrink in proportion to lost sales volumes. The NIA shipments analysis forecasts that 58 percent of base-case shipments would consist of units with standing pilot lights in 2021. Based on the worst-case scenario assumptions above, DOE modeled a 58-percent decline in direct production employment. As a result, DOE estimates a loss of up to 908 domestic production jobs in 2021 resulting from a design standard that eliminates standing pilot lights.

This conclusion is independent of any conclusions regarding indirect employment impacts in the broader United States economy, which are documented in chapter 15 of the NOPR TSD.

DOE requests comment on the portion of the industry's hearths production consisting of units equipped with standing pilot lights and on potential direct employment impacts resulting from a requirement for the elimination of standing pilot lights. This is identified as Issue 21 in section VII.E, ''Issues on Which DOE Seeks Comment.''

c. Impacts on Manufacturing Capacity

According to gas hearth manufacturers interviewed, a requirement eliminating standing pilot lights would not likely constrain manufacturing production capacity. Converting a gas hearth product's ignition system from a standing pilot light to an electronic ignition system is primarily a matter of purchasing and assembling different ignition system components. While this may entail higher costs for purchased parts and changes in assembly, it is not likely to impede manufacturers' capacity to continue producing gas hearth equipment in line with demand. Moreover, several manufacturers stated that the higher costs of producing equipment with electronic ignition systems could lead to a decline in demand, potentially leaving them with excess production capacity. Accordingly, DOE does not believe manufacturers will face capacity constraints as a result of today's proposed standard.

d. Impacts on Subgroups of Manufacturers

As discussed above, using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs largely from the industry average could be affected disproportionately. For the hearth products industry, DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Specifically, DOE identified and separately evaluated the impacts of an energy conservation standard on two subgroups of manufacturers: (1) Manufacturers of gas log sets and (2) small business manufacturers.

During interviews, multiple manufacturers commented that gas log sets represent a distinct market segment within the gas hearth industry. These manufacturers indicated that gas log sets serve a different market niche and face different space constraints than other gas hearth products. Additionally, gas log sets often sell at lower prices than

other gas hearth products. As a result, an increase in manufacturing costs and, by extension, retail price resulting from an energy conservation standard could have a proportionally greater impact on gas log sets relative to other gas hearth products.

Gas log sets are typically designed for use in existing wood-burning fireplaces. During interviews, manufacturers of gas log sets stated that unlike other gas hearth products, gas log sets compete with wood, coal, and wood/wax logs. These alternatives are typically inexpensive to purchase, such that consumers could feasibly substitute away from gas log sets and toward wood and/or wood/wax logs if an energy conservation standard leads to higher prices. According to these manufacturers, if design constraints specific to gas log sets cause an energy conservation standard to alter product aesthetics, it could further drive consumer product-switching.

Because gas log sets are designed to fit within existing wood-burning fireplaces, manufacturers indicated that design options for gas log sets are constrained by the geometric configurations of pre-existing fireplaces. Manufacturers stated that electronic ignition systems take up more space than standing pilot lights and that accommodating electronic ignition systems inside existing fireplaces could, in turn, reduce the size of the gas log sets consumers could purchase for their fireplaces. Manufacturers also indicated that electronic ignition system components can be difficult to conceal within a gas log set's design. Unlike other gas hearth products, gas log sets are not sold as part of a packaged unit, leaving manufacturers with limited options for obscuring the gas valve, pilot assembly, control module, wiring, and other components that make up an electronic ignition system. As a result, these components may be more exposed when used with gas log sets compared to other gas hearth products. Manufacturers also stated that electric outlets may not be situated in close enough proximity to wood-burning fireplaces to enable ready installation of units with electronic ignition systems. In such cases, the need for extension cords could impact the aesthetic appeal of products. Alternatively, hiring an electrician could raise installation costs and potentially deter price-sensitive consumers.

Alongside aesthetic impacts, manufacturers expressed concern regarding the cost implications of a potential ban on standing pilot lights. As discussed previously, purchasing components for electronic ignition systems typically costs manufacturers more than purchasing components for standing pilot lights. Higher manufacturing costs, in turn, lead to higher retail prices. To estimate the potential difference in cost resulting from a requirement eliminating standing pilot lights, DOE modeled the manufacturer production costs (MPCs) for both vented and unvented gas log sets using both standing pilot lights and electronic ignition systems. DOE similarly modeled MPCs for other categories of gas hearth products. Table V.9 presents the relative increase in MPC for products manufactured with electronic ignition systems as opposed to standing pilot lights. See chapter 5 of the TSD for a more detailed discussion of how MPCs were calculated.

TABLE V.9—RELATIVE COST IMPACTS OF CONVERTING GAS LOG SETS FROM STANDING PILOT LIGHTS TO ELECTRONIC IGNITION SYSTEMS

Product group	Estimated increase in MPC of switching from standing pilot to electronic ignition *	% Increase in MPC of ignition system	% Increase in overall MPC
Vented Fireplace/Insert/Stove	$28	56	9
Unvented Fireplace/Insert/Stove	32	47	11
Vented Gas Logs	70	227	37
Unvented Gas Logs	56	194	27
Outdoor	55	65	26

* DOE understands that standing pilot ignitions largely use two styles of gas valves: (1) Manual and (2) millivolt. The incremental costs of switching from standing pilot lights to electronic ignition systems presented here assume gas fireplaces, inserts, and stoves use standing pilot lights with millivolt gas valves while gas log sets and outdoor hearth products use standing pilot lights with manual gas valves. The millivolt gas valve uses a thermopile placed in the pilot light to generate a voltage difference, thereby allowing a remote control to be used to turn the burner on and off. These valves are larger and more expensive than manual gas valves, which are operated by hand. Based on public comments on previous rulemakings and manufacturer interviews, DOE recognizes the importance of space constraints and cost burden associated with control systems for gas log sets. For the purposes of analysis, DOE chose to represent gas log sets with standing pilots using manual gas valves. Fireplaces, inserts, and stoves provide more opportunity to package and conceal larger, more complex ignition systems. Accordingly, DOE chose to represent the standing pilot variation of this product category with models using millivolt gas valves.

As the results above indicate, DOE estimates that the cost of switching from a standing pilot light to an electronic ignition system could disproportionately impact gas log set manufacturers. These results are driven by two primary factors. First, the results are based on the assumption that gas log sets use standing pilot lights with manual gas valves, which are smaller and less expensive than standing pilot lights with millivolt gas valves. Under this assumption, the higher cost of purchasing electronic ignition system components would represent a more significant expenditure in absolute dollars for manufacturers of gas log sets using manual standing pilot lights relative to manufacturers of other hearth products (*e.g.* fireplaces, inserts, and stoves) using more expensive millivolt standing pilot lights. Second, the overall cost of manufacturing gas log sets is often lower than the overall cost of manufacturing other types of gas hearth products. This means the same increase in MPC in absolute dollars would result in a higher proportional increase in MPC for gas log sets. Assuming, as described above, that manufacturers of gas log sets are likely to see a greater increase in MPC in absolute dollars compared to manufacturers of other products, this would imply an even greater proportional increase in overall MPC of gas log sets. If retail prices scale with MPCs, manufacturers indicated that demand for gas log sets from price-sensitive consumers could decline and, in turn, negatively impact manufacturer profitability.

For the small business subgroup analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. To be categorized as a small business, a gas hearth product manufacturer and its affiliates may employ a maximum of 500 employees. This 500-employee threshold includes all employees in a business's parent company and any other subsidiaries and applies to all hearth products, categorized respectively under North American Industry Classification System (NAICS) code 333414, ''Heating Equipment (Except Warm Air Furnaces) Manufacturing'' and NAICS code 335228, ''Other Major Household Appliance Manufacturing.'' Based on this classification, DOE identified at least 66 manufacturers that qualify as domestic small businesses.

Small business concerns surrounding the proposed standard centered on issues of purchasing power and economies of scale. During interviews, small manufacturers expressed concern regarding the impact of eliminating standing pilot lights on their ability to compete with larger manufacturers. Because large manufacturers often produce at higher volumes, they may be able to source components for electronic ignition systems at lower per-unit prices than small manufacturers that produce at lower volumes. If the per-unit production costs increase more for small manufacturers than for large manufacturers, and if small manufacturers are not able to pass costs through to price-sensitive consumers, they could potentially face reduced markups and profits, as well as a decline in market share. The impacts on small business manufacturers are discussed in greater detail in the regulatory flexibility analysis, in section VI.B of this notice and in chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several recent impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at other product-specific Federal regulations that could affect gas hearth product manufacturers and that will take effect approximately three years before or after the 2021 compliance date of the proposed energy conservation standard. In interviews, manufacturers cited a Consumer Product Safety Commission regulation requiring barrier screens on gas hearth products. However, this requirement is set to take effect in January 2015 and, therefore, is not considered in this analysis. DOE did not identify any other Federally-mandated product-specific regulations that will take effect in the three years before or after the 2021 compliance date for this rulemaking and, therefore, has not presented any other regulations in this analysis of cumulative regulatory burden.

DOE requests comment on product-specific regulations that take effect between 2018 and 2024 that would contribute to manufacturers' cumulative regulatory burden. DOE requests information identifying the specific regulations, as well as data quantifying the associated cost burden on manufacturers. This is identified as Issue 22 in section VII.E, ''Issues on Which DOE Seeks Comment.''

3. National Impact Analysis

The shipments projections are a key input to the NIA. The base case forecast shows shipments of the covered product growing from approximately 978,000 in 2021 to 980,000 in 2050.

a. Significance of Energy Savings

DOE projected energy savings for hearth products purchased in the 30-year period that begins in the first full year of anticipated compliance with the proposed standard (2021–2050). The savings are measured over the entire lifetime of products purchased in the 30-year period. DOE quantified the energy savings attributable to the considered TSL as the difference in energy consumption between the standards case and the base case. Table V.10 presents the estimated primary and FFC energy savings. The approach for estimating national energy savings is further described in section IV.H.1.

TABLE V.10—CUMULATIVE NATIONAL PRIMARY AND FFC ENERGY SAVINGS FOR HEARTH PRODUCTS SOLD IN 2021–2050

Product	Energy savings	Trial standard level
		(quads)
Hearth Products	Primary	0.62
	Full-Fuel-Cycle	0.69

OMB Circular A–4 [68] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[69] The review timeframe established in EPCA is

[68] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a–4/*).

[69] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to hearth products. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The impacts are counted over the lifetime of hearth products purchased in 2021–2029. Table V.11 shows the national FFC energy savings for this period.

TABLE V.11—CUMULATIVE NATIONAL FFC ENERGY SAVINGS FOR THE TRIAL STANDARD LEVEL FOR HEARTH PRODUCTS SOLD IN 2021–2029

Product	Trial standard level
	(quads)
	1
Hearth Products	0.21

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSL considered for hearth products. In accordance with OMB's guidelines on regulatory analysis,[70] DOE calculated the NPV using both a 7-percent and a 3-percent real discount rate. Table V.12 shows the consumer NPV results for the TSL considered for hearth products. In each case, the impacts cover the lifetime of products purchased in 2021–2050.

TABLE V.12—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR THE TRIAL STANDARD LEVEL FOR HEARTH PRODUCTS SOLD IN 2021–2050

Product	Discount rate (%)	Trial standard level
Product class	Discount rate %	Trial standard level
		(billion 2013$)
Hearth Products	3%	3.12
	7%	1.03

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.13. The impacts are counted over the lifetime of products purchased in 2021–2029. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.13—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR THE TRIAL STANDARD LEVEL FOR HEARTH PRODUCTS SOLD IN 2021–2029

Product	Discount rate (%)	Trial standard level
Product class	Discount rate %	Trial standard level
		(billion 2013$)
Hearth Products	3%	1.04
	7%	0.46

The results presented here reflect the use of a flat trend for the price of hearth products over the analysis period (see section IV.F.1).

c. Indirect Impacts on Employment

DOE expects that energy conservation standards for heath products would reduce energy costs for consumers, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSL that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2021 to 2026), where these uncertainties are reduced.

The results suggest that the proposed standard would likely have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding indirect employment impacts.

4. Impact on Product Utility or Performance

DOE has tentatively concluded that the standard it is proposing in this NOPR would not lessen the utility or performance of hearth products.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that is likely to result from the proposed standard. The Attorney General determines the impact, if any, of any lessening of competition likely to

[70] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a–4).*

result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this NOPR and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production and use. Energy savings from energy conservation standards for hearth products covered by this NOPR may also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V.14 provides DOE's estimate of cumulative emissions reductions projected to result from the TSL considered. The table includes site, power sector, and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions in chapter 13 of the NOPR TSD.

TABLE V.14—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR HEARTH PRODUCTS TRIAL STANDARD LEVEL

	Trial standard level
Site and Power Sector Emissions*	
CO_2 (million metric tons)	32.3
SO_2 (thousand tons)	(4.23)
NO_X (thousand tons)	49.2
Hg (tons)	(0.014)
CH_4 (thousand tons)	0.28
N_2O (thousand tons)	0.01
Upstream Emissions	
CO_2 (million metric tons)	4.78
SO_2 (thousand tons)	(0.03)
NO_X (thousand tons)	75.8
Hg (tons)	(0.000)
CH_4 (thousand tons)	485
N_2O (thousand tons)	0.01
Total FFC Emissions	
CO_2 (million metric tons)	37.0
SO_2 (thousand tons)	(4.26)
NO_X (thousand tons)	125
Hg (tons)	(0.014)
CH_4 (thousand tons)	486
CH_4 (thousand tons CO_2eq)**	13,595
N_2O (thousand tons)	0.01
N_2O (thousand tons CO_2eq)**	3.35

* Primarily site emissions.
** CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
Note: Parentheses indicate negative values.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for the TSL considered for hearth products. As discussed in section IV.L, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2013$) are represented by $12.0/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.5/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.4/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $119/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (emissions-related costs) as the projected magnitude of climate change increases.

Table V.15 presents the global value of CO_2 emissions reductions at the considered TSL. DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.15—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER HEARTH PRODUCTS TSL

TSL	SCC Case*			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
	million 2013$			
Site and Power Sector Emissions				
1	196	956	1,535	2,966
Upstream Emissions				
1	29	142	228	440
Total FFC Emissions				
1	226	1,098	1,763	3,405

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the proposed standards for hearth products that are the subject of this NOPR. The dollar-per-ton values that DOE used are discussed in section IV.L. Table V.16 presents the cumulative present values for NO_X emissions reductions for the considered TSL calculated using the average dollar-per-ton value—$2,684 (2013$)—and 7-percent and 3-percent discount rates.

DOE seeks comment on the approach for estimating monetary benefits associated with emissions reductions. This is identified as issue 23 in section VII.E, ''Issues on Which DOE Seeks Comment.''

TABLE V.16—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER THE HEARTH PRODUCTS TSL

TSL	3% Discount rate	7% Discount rate
	million 2013$	
Site and Power Sector Emissions		
1	58.0	22.8
Upstream Emissions		
1	89.5	35.2
Total FFC Emissions*		
1	148	57.9

* Components may not sum due to rounding.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) No other factors were considered in this analysis.

8. Summary of National Ecnomic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for the new TSL considered in this rulemaking. Table V.17 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for the TSL for hearth products considered in this rulemaking, at both a 7-percent and a 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.17—HEARTH PRODUCTS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC case $12.0/metric ton CO_2* and medium value for NO_X	SCC case $40.5/metric ton CO_2* and medium value for NO_X	SCC case $62.4/metric ton CO_2* and medium value for NO_X	SCC case $119/metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	3.5	4.4	5.0	6.7
	Consumer NPV at 7% discount rate added with:			
TSL	SCC case $12.0/metric ton CO_2*	SCC case $40.5/metric ton CO_2*	SCC case $62.4/metric ton CO_2*	SCC case $119/metric ton CO_2*
	Billion 2013$			
1	1.3	2.2	2.9	4.5

* These label values represent the global SCC in 2015, in 2013$. For NO_X emissions, each case uses the medium value, which corresponds to $2,684 per ton.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2021–2050. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year; these impacts continue well beyond 2100.

C. Proposed Standard

When considering proposed standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered product, including hearth products, must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) As discussed previously, in determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

The tables in this section summarize the quantitative analytical results for the considered TSL, based on the assumptions and methodology discussed herein. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard (see section V.B.1.b), and impacts on employment. DOE discusses the impacts on direct employment in hearth products manufacturing in section V.B.2.b, and discusses the indirect employment impacts in chapter 16 of the NOPR TSD.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, renter versus owner or builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off at a higher than expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the cost to manufacturers is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of changes in the volume of product purchases in chapter 9 of the NOPR TSD. DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price

sensitivity variation according to household income.[71]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance standards and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[72] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis.

1. Benefits and Burdens of the Trial Standard Level Considered for Hearth Products

Table V.18 and Table V.19 summarize the quantitative impacts estimated for the potential standard for hearth products. The national impacts are measured over the lifetime of hearth products purchased in the 30-year period that begins in the year of compliance with the considered standard (2021–2050). The energy savings, emissions reductions, and value of emissions reductions refer to FFC results.

TABLE V.18—SUMMARY OF ANALYTICAL RESULTS FOR HEARTH PRODUCTS: NATIONAL IMPACTS

Category	TSL 1
National FFC Energy Savings (quads)	
	0.69.
NPV of Consumer Benefits (2013$ billion)	
3% discount rate	3.1.
7% discount rate	1.0.
Cumulative Emissions Reduction (Total FFC Emissions)	
CO_2 (*million metric tons)*	37.0.
SO_2 (*thousand tons)*	(4.26).
NO_X (*thousand tons)*	125.
Hg (*tons)*	(0.01).
CH_4 (thousand tons)	486.
CH_4 (thousand tons CO_2eq)*.	13,595.
N_2O (thousand tons)	0.01.
N_2O (thousand tons CO_2eq).	3.35.
Value of Emissions Reduction (Total FFC Emissions)	
CO_2 (*2013$ billion)***	0.226 to 3.405.
NO_X—3% discount rate (*2013$ million).*	148.
NO_X—7% discount rate (*2013$ million).*	57.9.

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

Note: Parentheses indicate negative values.

TABLE V.19—SUMMARY OF ANALYTICAL RESULTS FOR HEARTH PRODUCTS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1
Manufacturer Impacts	
Industry NPV (2013$ million).	122–125.8.
Base Case = $125.3	
Change in Industry NPV (*2013$ million*).	(3.3) to 0.5.
Change in Industry NPV (≠)†.	(2.6) to 0.4.
Consumer Mean LCC Savings (2013$)	
Hearth Products	165.
Consumer Simple PBP (years)	
Hearth Products	2.9.
Consumer LCC Impacts	
Consumers with Net Cost (%).	23.

Note: Parentheses indicate negative values.

At TSL 1, DOE estimates there would be a savings of 0.69 quads of energy, an amount DOE considers significant. TSL 1 has an estimated NPV of consumer benefit of $1.03 billion using a 7-percent discount rate, and $3.12 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 1 are 37.0 million metric tons (Mt)[73] of carbon dioxide (CO_2), 486 thousand tons of methane (CH_4), 125 thousand tons of nitrogen oxides (NO_X), and 0.01 thousand tons of nitrous oxide (N_2O). Projected emissions show an increase of 4.26 thousand tons of sulfur dioxide (SO_2) and 0.01 tons of mercury (Hg). The increase is due to increased electricity use associated with the shift to electronic ignition in the subject hearth products. The estimated monetary value of the CO_2 emissions reductions at TSL 1 ranges from $0.226 billion to $3.405 billion.

At TSL 1, the average LCC savings are $165. The simple PBP is 2.9 years. The share of consumers experiencing a net LCC cost is 23 percent.

At TSL 1, the projected change in INPV ranges from a decrease of $3.3 million to an increase of $0.5 million. If the decrease of $.3.3 million were to occur, TSL 1 could result in a net loss of up to 2.6 percent of INPV for manufacturers of covered hearth products.

The Secretary tentatively concludes that, at TSL 1 for hearth products, the benefits of energy savings, positive NPV of total consumer benefits at a 3-percent and 7-percent discount rate, average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions outweigh the reduction in industry value and the net LCC cost for a small number of consumers. Accordingly, the Secretary of Energy has tentatively concluded that TSL 1 would save a significant amount of energy and is economically justified. Based upon the above considerations, DOE proposes to adopt as an energy conservation standard the prescriptive design requirement that would disallow the use of continuously-burning pilots (*i.e.,* ''standing pilots'' or ''constant-burning pilots'') in hearth products.

2. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of today's proposed standard can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) the annualized national economic value (expressed in 2013$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of

[71] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[72] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (Last accessed May 3, 2013).

[73] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

emission reductions, including CO_2 emission reductions.[74] The value of CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of hearth products shipped in 2021–2050. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year; these impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards for hearth products are shown in Table V.20. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015)), the estimated cost of the hearth products standards proposed in this rule is $61.1 million per year in increased equipment costs, while the estimated benefits are $186 million per year in reduced equipment operating costs, $67 million per year in CO_2 reductions, and $7.0 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $199 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the hearth products standards proposed in this rule is $61.2 million per year in increased equipment costs, while the estimated benefits are $251 million per year in reduced equipment operating costs, $67 million per year in CO_2 reductions, and $9.0 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $266 million per year.

TABLE V.20—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARD (TSL 1) FOR HEARTH PRODUCTS *

	Discount rate	Primary estimate	Low net benefits estimate	High net benefits estimate
		million 2013$/year		
Benefits				
Consumer Operating Cost Savings	7%	186	175	195.
	3%	251	235	265.
CO_2 Reduction Monetized Value ($12.0/t case)**.	5%	20	20	20.
CO_2 Reduction Monetized Value ($40.5/t case)**.	3%	67	67	67.
CO_2 Reduction Monetized Value ($62.4/t case)**.	2.5%	98	98	98.
CO_2 Reduction Monetized Value ($119/t case)**.	3%	207	207	207.
NO_X Reduction Monetized Value (at $2,684/ton)**.	7%	7.00	7.00	7.00.
	3%	8.99	8.99	8.99.
Total Benefits †	7% plus CO_2 range	212 to 400	202 to 389	222 to 410.
	7%	260	249	269.
	3% plus CO_2 range	280 to 468	264 to 452	294 to 482.
	3%	327	311	341.
Costs				
Consumer Incremental Equipment Costs	7%	61.1	61.1	61.1
	3%	61.2	61.2	61.2
Net Benefits				
Total†	7% plus CO_2 range	151 to 339	141 to 328	161 to 349
	7%	199	188	208
	3% plus CO_2 range	219 to 407	203 to 390	233 to 420
	3%	266	250	280

* This table presents the annualized costs and benefits associated with hearth products shipped in 2021 – 2050. These results include benefits to consumers that accrue after 2050 from the products purchased in 2021 – 2050. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2014* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Incremental product costs are the same in each Estimate.

[74] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values in parentheses represent the SCC in 2015. The SCC time series incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems these proposed standards address are as follows:

(1) A lack of consumer information and difficulties in analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient products are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the product purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of hearth products that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

In addition, DOE has determined that this regulatory action is a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on this rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of gas hearth products, the Small Business Administration (SBA) has set a size threshold, 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, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (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.* Manufacturing of heating hearth products is classified under NAICS code 333414, ''Heating Equipment (Except Warm Air Furnaces) Manufacturing,'' and manufacturing of decorative hearth products is classified under NAICS code 335228, ''Other Major Household Appliance Manufacturing.'' For both NAICS codes, the SBA sets a threshold of 500 employees or fewer for an entity to be considered a small business. This 500-employee threshold includes all employees in a business's parent company and any other subsidiaries.

1. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

DOE reviewed the potential standard levels considered in today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. To better assess the potential impacts of this rulemaking on small entities, DOE conducted a more focused inquiry of the companies that could be small business manufacturers of products covered by this rulemaking. During its market survey, DOE used publicly-available information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (*e.g.,* HPBA), information from previous rulemakings, individual company Web sites, and market research tools (*e.g.,* Hoover's reports) to create a list of companies that manufacture gas hearth products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any additional small manufacturers during manufacturer interviews. DOE reviewed publicly-available data and contacted various companies on its complete list of manufacturers to determine whether they met the SBA's definition of a small business manufacturer of gas hearth products. DOE screened out companies that do not manufacture products impacted by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE identified 90 potential manufacturers of gas hearth products sold in the U.S. that would be affected by today's proposal. Of these, DOE identified 66 as domestic small business manufacturers. DOE contacted a subset of small businesses to invite them to take part in a manufacturer impact analysis interview. Of 25 small businesses contacted, DOE was able to reach and discuss potential standards with five of those entities. DOE also obtained information about small businesses and potential impacts on small businesses while interviewing large manufacturers.

In interviews, small manufacturers expressed concern regarding the impact of disallowing standing pilot lights on their ability to compete with larger manufacturers. Manufacturers stated that gas hearth products with electronic ignition systems cost more to produce than gas hearth products with standing pilot lights, as the components purchased for electronic ignition systems tend to be more expensive. Since large manufacturers often produce at higher volumes, they may be able to source components at lower per-unit prices than small manufacturers that produce at lower volumes. Because small manufacturers may not benefit from the same economies of scale as large manufacturers, an energy conservation standard disallowing standing pilot lights could disproportionately impact their production costs and, in turn, the prices at which they sell their products. This anticipated change in manufacturer production costs (MPCs) drove small manufacturer concerns surrounding the impact of an energy conservation standard on their ability to remain competitive in the gas hearth market.

2. Description and Estimate of Compliance Requirements

To evaluate small manufacturers' concerns regarding the competitive implications of disallowing standing pilot lights, DOE modeled the difference in cost small manufacturers might face when sourcing components at lower volumes. Due to limited available information on the relative sales volumes of small and large manufacturers, DOE selected volumes of 1,000 units (used to represent small manufacturers) and 10,000 units (used to represent large manufacturers) for each product group analyzed. DOE developed its analysis based on the engineering teardown analysis and cost model, as well as manufacturer feedback on the costs of electronic ignition systems.

The table below presents the estimated added per-unit cost of an electronic ignition system compared to a standing pilot system at the two representative production volumes modeled. As the results indicate, manufacturers would likely pay less per unit when producing 10,000 units versus 1,000 units. Estimated costs would be expected to decline further as production volumes climb higher.

TABLE VI.1—ADDED COST OF ELECTRONIC IGNITION SYSTEMS AT REPRESENTATIVE PRODUCTION VOLUMES

Product group	Baseline MPC	Added cost at 1,000 units	Added cost at 10,000 units
Vented Fireplace/Insert/Stove	$322	$31	$26
Unvented Fireplace/Insert/Stove	281	33	24
Vented Log Sets	190	70	58
Unvented Log Sets	208	69	51
Outdoor Hearths	210	65	42

DOE's analysis suggests that disallowing standing pilot lights would increase the per-unit MPCs of gas hearth products by a greater amount for small-volume producers than for large-volume producers. Higher MPCs, in turn, typically lead to higher end-user purchase prices. If products manufactured by small businesses cannot compete with products manufactured by large businesses at lower cost, small businesses could potentially experience a decline in profits and/or choose to exit the market.

DOE recognizes that larger manufacturers may have a competitive advantage due to their size and ability to source purchased parts at lower cost. If the per-unit cost of products increases more for small manufacturers than for large manufacturers, and if small manufacturers are not able to pass costs through to price-sensitive consumers, they could potentially face reduced markups and profits, as well as a decline in market share. Because the proposed standard could cause competitive concerns for small manufacturers, DOE cannot certify that the proposed standard would not have a significant impact on a substantial number of small businesses.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Rule

DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that is

technically feasible and economically justified and results in a significant conservation of energy. The discussion above analyzes impacts on small businesses that would result from the ban on standing pilot lights that DOE is proposing in today's notice. In addition to the ban on standing pilot lights being considered, the NOPR TSD includes a regulatory impact analysis (RIA) in chapter 17. For gas hearth products, the RIA discusses the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; (5) voluntary energy efficiency targets; and (6) government bulk purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the proposed standards, DOE does not intend to consider these alternatives further because in several cases, they would not be feasible to implement without authority and funding from Congress, and in all cases, DOE has determined that the site energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard (ranging from approximately 0.0 percent to 15.9 percent of the site energy savings from the proposed standard). Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standard set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

DOE continues to seek input from small businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of hearth products must certify to DOE that their products comply with any applicable energy conservation standards. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment (76 FR 12422 (March 7, 2011)) and plans to establish such regulations for hearth products pending the outcome of the proposed determination of coverage and energy conservation standards rulemakings. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). DOE will seek OMB approval under the PRA in the rulemaking that establishes the certification requirements for hearth products, which will be conducted subsequent to the current proceeding if the proposed determination is ultimately positive and energy conservation standards are ultimately adopted.

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

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal 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 tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 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. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), 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 section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this 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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.*

Although this proposed rule, which proposes energy conservation standards for hearth products, does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private sector. Specifically, the proposed rule would likely result in a final rule that could require expenditures of $100 million or more, including: (1) Investment in research and development and in capital expenditures by residential hearth product manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency hearth products, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. Pursuant to 42 U.S.C. 6292(a)(20) and (b)(1) and 42 U.S.C. 6295(l)(1)–(2) and (o), this proposed rule would establish amended energy conservation standards for hearth products that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

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

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR 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 OIRA at 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 promulgates 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.

DOE has tentatively concluded that this regulatory action, which would adopt energy conservation standards for hearth products, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. 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 notice. 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. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary 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 at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=84.* 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 an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

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. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. 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 allow, 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 and will be accessible on the DOE Web site. 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, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.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 itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Otherwise, 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 *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.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 below.

DOE processes submissions made through *www.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 *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.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 in 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/courier, please provide all items on a CD, if feasible, in which case, it is not necessary to submit printed copies. No telefacsimiles (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, that are written in English, and that are 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. 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 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).

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 seeks comment on the proposed definition for hearth products found in the December 2013 NOPD (78 FR 79638) and the range of products covered by the proposed rule if this definition were applied in the final rulemaking. DOE requests comment on which products would fall into each of the product groups as currently defined (1. vented fireplaces/stoves/inserts, 2. unvented fireplaces/stoves, inserts, 3. vented gas log sets, 4. unvented gas log sets, and 5. outdoor) and whether additional clarifying criteria should be added to the definition to cover intended products. DOE requests comment on which hearth products that are ''gas appliances that simulate a solid-fueled fireplace or presents a flame pattern'' may by the proposed definition be grouped into the hearth product category, but may warrant a different design standard due to such factors as utility of the feature to users. (See section III.A.)

2. DOE seeks input on the assumption that should standing pilot ignitions be disallowed, electronic intermittent ignitions would provide the same level of safety as a standing pilot and whether a standing pilot provides a means for ensuring that gas is lit prior to opening the gas valve and ensuring that oxygen levels in a the room remain at a safe levels prior to the main burner ignition. DOE request comment on whether there are any ANSI safety standard certification, building code, or other industry safety standard that may preclude a manufacturer from selling a particular hearth product with an electronic intermittent ignition. (See section III.B.)

3. DOE seeks comment on its tentative conclusions regarding hearth product definitions and categorizations as they pertain to active mode energy use. (See section III.C and chapter 3 of the TSD.)

4. DOE seeks comment on its screening analysis including any potential impacts on product utility or availability. (See section III.G.1.d and chapter 4 of the TSD.)

5. DOE seeks comment on its assumptions regarding the electrical energy consumption of the ignition module for hearth products. (See section III.I and chapter 7 of the TSD).

6. DOE seeks comment on its list of identified technologies for reducing the fuel consumption of hearth products. (See section IV.A.3 and chapter 3 of the TSD.)

7. DOE seeks comment on its general engineering analysis approach for hearth products. (See section IV.C and chapter 5 of the TSD.)

8. DOE seeks comment on the availability and applicability of intermittent pilot ignition components for hearth products. (See section IV.C.1 and chapter 5 of the TSD.)

9. DOE requests comment on its assumption that ignition component costs for vented fireplaces, inserts, and stoves are equivalent. (See section IV.C.1 and chapter 5 of the TSD.)

10. DOE requests comment on the derived manufacturer production costs and markups. (See sections IV.C.3.e and IV.C.4 and chapter 5 of the TSD.)

11. DOE seeks input on the representative input capacities (kBtu/h) used to calculate the fuel used by the standing pilot for each of the five hearth product groups identified in the proposal and discussed in Chapter 7 of the TSD. In particular, the agency seeks input on whether the RECS 2009 annual space heating energy consumption numbers for vented and unvented fireplaces is representative of all hearth products and any data that would be helpful in estimating the energy consumption for the hearth product groups identified. DOE also seeks comment

on the average on-time per cycle assumption of 30 seconds for intermittent pilot ignition and any data indicating specific on-time per cycle for different product groups to help inform the energy use analysis. (See section IV.E and chapter 7 of the TSD.)

12. DOE requests comment on the assumed pilot light usage, specifically the percentages of consumers who operate their hearth product standing pilots year round, for only the heating season, only when operating the unit, the treatment of LPG units, and the treatment of heat input into the space by the standing pilot. (See section IV.E and chapter 7 of the TSD.)

13. DOE requests comment on the assumption to not apply a trend to its manufacturer selling price, as well as any information that would support the use of alternate assumptions. (See section IV.F.1 and chapter 8 of the TSD.)

14. DOE requests comment on installation and retrofit assumptions regarding electrical connections and grounding. (See section IV.F.1 and chapter 8 of the TSD.)

15. DOE requests comment on intermittent pilot ignition module repair frequency and cost components applied in the life-cycle cost and payback period analysis. The agency requests input on the use of $142.89 as the bare material cost of repair of the intermittent pilot compared the bare material cost of a standing pilot of $43.72. In addition, the agency requests comment on the labor hours associated with the repair of both the standing pilot and intermittent pilot, which were both determined to be 1.50 labor hours as referenced in Section 8.2.3.2 of the TSD. DOE also requests comment on whether consumers may choose to replace the entire product as opposed to repair the failed ignition device and at what price point consumers would make that decision and for which hearth products. (See section IV.F.2.c and chapter 8 of the TSD.)

16. DOE requests comment on lifetime assumptions applied in the life-cycle cost and payback period analysis where DOE assumes the minimum lifetime of both the hearth product and ignition system to be 5 years and 1 year, respectively and that for purposes of the life-cycle cost analysis that any repair costs would be free to the consumer during this warranty period. In addition, DOE requests comment on the product lifetime distribution for hearth products that are average are assumed to be 15 years and for hearth product ignition systems are assumed to be 7.3 years as laid out in Section 8.2.3.3 of the TSD. DOE requests input on lifetime for products identified in the five different hearth product groups (vented fireplaces, unvented fireplaces, vented log sets, unvented log sets, and outdoor) that may inform the lifetime distribution analysis. (See section IV.F.2.d and chapter 8 of the TSD.)

17. DOE requests comment on the estimated base-case efficiency distribution. (See section IV.F.2.f and chapter 8 of the TSD.)

18. DOE requests comment on its assumption that switching from gas to electric hearth products due to the imposition of the design standard would be negligible. (See section IV.G and chapter 9 of the TSD.)

19. DOE requests comment on DOE's methodology to correlate housing starts with hearth products shipments. In addition, DOE requests comment on the assumed three-to-one ratio between non-HPBA and HPBA shipments used to develop the total patio heater shipments assumptions. DOE also requests comment on the assumed fraction of match-lit shipments for each hearth product group and the use of the midpoint of the HPBA range as representative of the market shares of match lit units for each product group as represented in Table 9.3.2 of the TSD. DOE also requests comment on the assumed 0.754 ratio of housing starts to hearth products shipments as discussed in section 9.5 of the TSD and what percentage of these hearth products are connected to natural gas pipelines versus homeowners' propane storage tanks. (See section IV.G and chapter 9 of the TSD.)

20. DOE requests comment on expected industry capital and product conversion costs. For the capital conversion costs, DOE requests comment on the determination that the design standard would primarily entail a component swap, in which manufacturers would assemble hearth products using a different set of purchased parts for the ignition system and that re-tooling or reconfiguring production facilities likely would be limited. In particular, DOE requests comment on the assigned nominal capital conversion cost per manufacturer, equivalent to $10,000, to account for any one-time capital investments and calculated industry conversion costs of $0.9 million as discussed in Chapter 12.4.6 of the TSD. For the product conversion costs, DOE requests comment on the conversion cost estimates on the assumption that manufacturers would incur limited costs related to R&D, testing and certification, and development of marketing materials in order to bring into compliance models not currently offered with the option of an electronic ignition system. In particular, DOE requests comment on the assumed product conversion cost of $10,000 in fixed costs per model to arrive at the total industry product conversion costs of $7.8 million. DOE also requests comment on the number of hearth product manufacturers who may need to invest in capital equipment, assumed to be 90 manufacturers, and the number of hearth product models, assumed to be 781 models, that may need model redesigns in order to comply with the proposed standards. (See section V.B.2 and chapter 12 of the TSD.)

21. DOE requests comment on potential impacts of an energy conservation standard on domestic production employment. (See section V.B.2 and chapter 12 of the TSD.)

22. DOE requests comment on product-specific regulations that take effect between 2018 and 2024 that would contribute to manufacturers' cumulative regulatory burden. DOE requests information identifying the specific regulations, as well as data quantifying the associated cost burden on manufacturers. (See section V.B.2 and chapter 12 of the TSD.)

23. DOE requests comment on the approach for estimating monetary benefits associated with emissions reductions. (See section V.B.6 and chapter 14 of the TSD.)

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

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

Issued in Washington, DC, on January 28, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.2 is amended by adding the definition of ''Hearth product,'' in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Hearth product means a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed.

* * * * *

■ 3. Section 430.32 is amended by adding paragraph (z) to read as follows:

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

* * * * *

(z) *Hearth Products.* Any hearth product manufactured on and after [DATE 5 YEARS AFTER PUBLICATION OF THE FINAL RULE] shall not be equipped with a constant-burning pilot light.

[FR Doc. 2015–02179 Filed 2–6–15; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1355

Adoption and Foster Care Analysis and Reporting System; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC47

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. This notice of proposed rulemaking (NPRM) builds on an earlier proposed rule, published January 11, 2008 that addressed the requirements for State title IV–E agencies to collect and report data to ACF on children who are in out-of-home care and in subsidized adoption or guardianship arrangements with the State and AFCARS penalty requirements of the Adoption Promotion Act of 2003. This NPRM proposes many of the same changes and additions as the earlier NPRM and includes several new modifications to address changes made by the Fostering Connections to Success and Increasing Adoptions Act of 2008, such as collecting and reporting data related to the title IV–E guardianship assistance program, sibling placement, the extension of title IV–E assistance to children age 18 or older, educational stability plans and transition plans for children in foster care and the inclusion of Tribal title IV–E agencies. Additionally, modifications were made to address new requirements in the Preventing Sex Trafficking and Strengthening Families Act, which was enacted on September 29, 2014 to include information on: Victims of sex trafficking, children in foster care who are pregnant or parenting, and children in non-foster family settings.

DATES: In order to be considered, we must receive written comments on this NPRM on or before April 10, 2015.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule via regular postal mail to Kathleen McHugh, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue SW., 8th Floor, Washington, DC 20024. Please be aware that mail sent to us may take an additional 3–4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight or other special delivery method, please ensure first that they are able to deliver to the above address. You may also transmit comments electronically via the Internet at *http://www.regulations.gov/*. We urge you to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, you should access *http://www.regulations.gov/*. Comments will be available for public inspection Monday through Friday 7:30 a.m. to 4:00 p.m. at the above address by contacting Kathleen McHugh at (202) 401–5789.

Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act (PRA) section of this preamble. A copy of these comments also may be sent to the Department representative listed above.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Children's Bureau, Administration on Children, Youth and Families, (202) 401–5789 or by email at *kathleen.mchugh@acf.hhs.gov*. Do not email comments on the NPRM to this address.

SUPPLEMENTARY INFORMATION:

Contents

I. Executive Summary per Executive Order 13563

Executive Order 13563 requires that regulations be accessible, consistent, written in plain language, and easy to understand. This means that regulatory preambles for lengthy or complex rules (both proposed and final) must include executive summaries. Below is the executive summary for this AFCARS NPRM.

(1) Purpose of the AFCARS NPRM

(a) *The need for the regulatory action and how the action will meet that need:* The AFCARS regulations need to be revised and updated to: (1) Incorporate statutory requirements since 1993; (2) implement our statutory authority to assess penalties for noncompliant data submissions; (3) enhance the type and quality of information title IV–E agencies report to ACF by modifying and expanding data elements and requiring title IV–E agencies to submit historical data; and (4) remove outdated and antiquated requirements that will allow title IV–E agencies and ACF to keep the pace with new technology. Per existing regulations, title IV–E agencies must submit data on a semi-annual basis to ACF and we propose this to remain the same. The regulations specify the reporting population, standards for compliance, and all data elements and methods for capturing and reporting AFCARS data. In large part title IV–E agencies report the child's information as of a certain date in the six-month report period rather than a detailed accounting of events that may have occurred over the six-month report period while in foster care. This NPRM allows us to gather longitudinal data and improve the data collected by including more comprehensive data on children in foster care and adding new data elements to better measure child welfare performance and outcomes of children and families.

(b) *Legal authority for the NPRM:* The existing regulations (at 45 CFR 1355.40 and the appendices to part 1355) were published in December 1993 in response to a statutory mandate for adoption and foster care data in section 479 of the Social Security Act (the Act). That mandate remains in effect. In addition, section 474(f) of the Act requires that the Secretary impose penalties for failure to submit AFCARS data under certain circumstances. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which she is responsible under the Act. The Department must have, per section 479 of the Act, a data collection system which provides comprehensive national information on:

- The demographic characteristics of adopted and foster children and their parents;
- the status and characteristics of the foster care population;

• the number and characteristics of children entering and exiting foster care, children adopted and children placed in living arrangements outside of the responsible title IV–E agency;
• the extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and
• the number of foster children identified as sex trafficking victims before entering or while in foster care.

(2) Summary of the Major Provisions of the NPRM

(a) *Reporting Populations.* We propose two reporting populations: The out-of-home care reporting population and the adoption and guardianship assistance reporting population. We propose to define the out-of-home care reporting population to include a child of any age who is in foster care or a child who has run away or whose whereabouts are unknown at the time the title IV–E agency becomes responsible for the child. Once the child enters foster care, he or she remains in the out-of-home care reporting population until the title IV–E agency's responsibility for the child ends. This proposal is very similar to current AFCARS practice. The adoption and guardianship assistance reporting population includes any child who is in a finalized adoption under a title IV–E adoption assistance agreement and any child who is in a legal guardianship under a title IV–E guardianship assistance agreement. Agencies continue to report a child through the report period in which his or her title IV–E agreement ends.

(b) *Data Structure.* As stated above, we propose that title IV–E agencies report AFCARS information in two separate data files: an out-of-home care data file and an adoption and guardianship assistance data file.

• For the out-of-home care data file, title IV–E agencies will report a combination of point-in-time information that's not likely to change (*e.g.,* demographics) and information on the events in the child's life over time, including every time the child enters or exits foster care and every placement change. This will support longitudinal and cohort analysis of the data that will be particularly useful for the Child and Family Services Reviews (CFSRs) and ACF's other efforts to analyze performance with respect to child and family outcomes.

• For the adoption and guardianship assistance data file, title IV–E agencies will report information that describe the circumstances of the child and adoptive family or guardians at a single point-in-time in the report period. This information is not likely to change over time.

(c) *Data Elements.* We propose to keep and revise the vast majority of data elements currently in AFCARS and add new data elements. We modify existing out-of-home care data elements on the child's placements, circumstances surrounding the child at removal, prior adoptions, and reasons for exiting care, among others. These modifications are necessary to clarify data element descriptions and conform to the new data structure. We propose new data elements that will allow us to better understand the characteristics of children in foster care and provide better context for their outcomes. Some of these include:

• Timely plans to transition out of foster care and the frequency of caseworker visits;
• the child's educational level, educational stability and involvement with special education;
• existing and previous health, behavioral and mental health conditions, and information on the timeliness of health assessments;
• domestic and intercountry adoptions and prior adoptions and guardianships; and
• new elements to better track Tribal, State and Federal financial support of foster care, adoption and guardianships.

(d) *Compliance and Penalties.* The proposed rule will strengthen our ability to hold title IV–E agencies accountable for submitting quality data. A title IV–E agency must meet basic file standards, such as timely data file submissions and more specific data quality standards, such as 10 percent or less of a variety of errors for its out-of-home care data file. A title IV–E agency that does not meet the standards upon initial submission of the data will have six months to correct and submit its data. If a title IV–E agency does not meet the standards after corrective action, ACF will apply the penalties required in statute. Penalty amounts are one-sixth of one percent of the agency's title IV–E foster care administrative funds for initial noncompliance and one-fourth of one percent of such funds for continued noncompliance.

(3) Costs and Benefits

We have determined that the costs to title IV–E agencies as a result of this rule will not be significant. We estimate that costs will be approximately $24 million annually for AFCARS for the first five years of implementation, half of which ($12 million) we estimate will be reimbursed by the Federal government as allowable costs under title IV–E. Depending on the cost category and each agency's approved plans for title IV–E and cost allocation, they may claim allowable costs as Automated Child Welfare Information System costs at the 50 percent rate, administrative costs for the proper and efficient administration of the title IV–E plan at the 50 percent rate, or training of agency staff at the 75 percent rate. Many title IV–E agencies already collect the information proposed in this NPRM. Other existing data sets cannot yield similar information because AFCARS is the only national, comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption or guardianship with the involvement of the State or Tribal title IV–E agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate.

II. Background on Foster Care and Adoption Data Collection

In 1982, the Department of Health and Human Services (HHS), through a grant to the American Public Human Services Association (formerly the American Public Welfare Association), implemented the Voluntary Cooperative Information System (VCIS) to collect aggregate information annually about children in foster care and special needs adoptions from State child welfare agencies. While some States reported data to VCIS, by 1986, Congress and other stakeholders recognized that there were a number of weaknesses in VCIS. Namely, VCIS was criticized for intermittent reporting by the States, the use of a variety of report periods, a lack of common definitions for data elements, a lack of timeliness of the data, poor data quality and the collection of aggregate data that had limited analytic utility.

As a result of these and other concerns, the President signed the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) on October 21, 1986, which in part added section 479 to title IV–E of the Act. Section 479 of the Act describes the series of steps that HHS was required to take to establish a national data collection system for foster care and adoption. We were required to develop a system that avoids unnecessary diversion of resources from agencies responsible for adoption and foster care and assures that the data collected is reliable and consistent over time and across jurisdictions through the use of uniform definitions and methodologies. Furthermore, the law

required the system to provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents (biological, foster and/or adoptive parents); the status of the foster care population (including the number of children in foster care, length and type of placement, availability for adoption and goals for ending or continuing foster care); the number and characteristics of children placed in or removed from foster care; children adopted or whose adoptions have been terminated; children placed in foster care outside the State that has placement and care responsibility; and, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

On August 19, 1993, the President signed into law the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Public Law 103–66 provided State title IV–E agencies with the opportunity to obtain title IV–E funds to plan, design, develop and implement a Statewide Automated Child Welfare Information System (SACWIS). On December 22, 1993, ACF published a final rule to establish AFCARS and implement SACWIS. In the AFCARS final rule, we required State title IV–E agencies to submit certain data to us on a semi-annual basis about children in foster care and adoptions that involve the State title IV–E agency. The rule required State title IV–E agencies that chose to develop a SACWIS to ensure that their system collected the AFCARS data and reported the data to ACF. We also set forth a minimum set of data standards that each State title IV–E agency had to meet in order to be in compliance with the AFCARS requirements and not be assessed a penalty.

State title IV–E agencies were required to report the first AFCARS data to us for Federal fiscal fear (FFY) 1995. However, it was not until FFY 1998, when we implemented AFCARS financial penalties for a State title IV–E agency not submitting data or submitting data of poor quality that the data became stable enough for ACF and others to use for a wide variety of purposes.

On November 19, 1997, four years after SACWIS funding was made available, the President signed the Adoption and Safe Families Act of 1997 (Pub. L. 105–89), which required the use of AFCARS data for two specific activities the calculation of Adoption and Legal Guardianship Incentive Payments (section 473A of the Act) and the Child Welfare Outcomes Annual Report (section 479A of the Act). Since that time, data from AFCARS also has been used to provide samples for the current CFSRs and title IV–E reviews, develop outcome and performance measures for the current CFSRs and the Government Performance and Results Act (GPRA), calculate State allocations for the Chafee Foster Care Independence Program (section 477 of the Act), generate short- and long-term budget projections, conduct trend analyses for short- and long-term program planning and respond to requests for information from the Congress, other Federal agencies, States, media and the public about children in foster care and children being adopted.

While AFCARS data is used for many purposes, there are no penalties currently for non-compliant data submissions. Due to a settlement of several States' appeals of AFCARS penalties, ACF discontinued withholding Federal funds for a title IV–E agency's failure to comply with AFCARS requirements in January 2002 (see ACYF–CB–IM–02–03). However, on December 2, 2003 the President signed the Adoption Promotion Act of 2003 (Pub. L. 108–145), which required ACF to institute specific financial penalties for a State title IV–E agency's noncompliance with AFCARS requirements. We notified State title IV–E agencies in ACYF–CB–IM–04–04, issued February 17, 2004, that we would not assess penalties until we issued revised final AFCARS regulations.

Ten months after the publication of the 2008 Notice of Proposed Rule Making (hereafter referred to as the 2008 NPRM), on October 7, 2008 (73 FR 2082), the President signed into law the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351). Public Law 110–351 amended title IV–E of the Act to create an option for title IV–E agencies to provide kinship guardianship assistance payments, to extend eligibility for title IV–E payments up to age 21, to de-link adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility through an eight-year phase-in and to provide federally-recognized Indian Tribes and Tribal organizations or consortia with the option to operate a title IV–E program directly, among many other provisions. These recent statutory changes to the title IV–E program are significant and thus contributed to our decision to issue a new NPRM rather than proceed with a final rule based on the 2008 NPRM. We conducted additional consultation through a Request for Comment published in the **Federal Register** on July 23, 2010 (75 FR 43187).

Public Law 110–351 also required HHS to issue an Interim Final Rule (IFR) implementing the inclusion of Tribal title IV–E agencies. We published the IFR on January 6, 2012 (77 FR 896), which defined ''title IV–E agency'' as the State or Tribal agency administering or supervising the administration of the title IV–B and title IV–E plans. The IFR also revised the regulations at 45 CFR 1355.40 and the appendices to part 1355 to apply the AFCARS requirements to all title IV–E agencies.

In September 2014, the President signed into law the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. 113–183). Public Law 113–183 modified the AFCARS requirements in section 479 of the Act, the annual Child Welfare Outcomes Report in section 479A of the Act, and added several reports to Congress requiring the collection and reporting of certain information. This includes information on victims of sex trafficking, children in foster care who are pregnant or parenting, and children in foster care in non-foster family settings and the services they receive.

III. Consultation and Regulation Development

In the preamble to the AFCARS final regulation issued December 22, 1993, we indicated that we would revisit the regulations to assess how we may improve AFCARS (58 FR 67917). Prior to the publication of the 2008 NPRM, we analyzed the types of technical assistance requested by and provided to title IV–E agencies, our findings from AFCARS Assessment Reviews and reports from the past several years issued by the Government Accountability Office (GAO) and the Department's Office of the Inspector General (OIG) on AFCARS-related issues. We included in the 2008 NPRM an extensive discussion of the consultation process we conducted through a variety of focus groups and a **Federal Register** notice published on April 28, 2003 (68 FR 22386).

In the 2008 NPRM, we focused improvements on five general areas by restructuring the data to capture more information over time, expanding and clarifying the reporting populations, capturing greater detail on children in out-of-home care, improving the quality of data and eliminating unnecessary data and inefficiencies in the data submission process. Specifically, we proposed that AFCARS data support longitudinal data analysis by capturing comprehensive information on the child's experience in the title IV–E

agency's foster care system. We also proposed to expand the out-of-home care reporting population to include all children placed away from their parents or legal guardians for whom the title IV–E agency has placement and care responsibility. This proposal included children who were placed in juvenile justice facilities under the title IV–E agency's placement and care responsibility, but who never entered foster care. We also added and clarified a number of data elements so that title IV–E agencies could provide us with greater detail on the demographics and circumstances of children in out-of-home care. The proposed changes to the out-of-home care reporting population were designed to permit an enhanced analysis of the factors that may affect a child's permanency and well-being.

We also proposed in the 2008 NPRM to improve AFCARS data quality in several ways by clarifying existing data element descriptions, strengthening the assessment and identification of errors within a title IV–E agency's data file, and developing cross-file checks to identify defaults and other faulty programming that resulted in skewed data across the title IV–E agency's entire data file. We proposed to implement penalties for title IV–E agencies that do not meet our data file and data quality standards for AFCARS consistent with section 474(f) of the Act. In addition, we proposed to eliminate features that are no longer useful such as removing the requirement that the title IV–E agency report summary adoption and foster care data files, merging most of the currently reported adoption information into the out-of-home care data file and removing outdated technical submission requirements from the regulation.

In response to the 2008 NPRM, we received comments from 77 State and local child welfare administrators, advocates, educators, researchers and members of the public. While many commenters supported the overall direction of the NPRM, they also had many specific areas of concern, which are detailed in the next section and throughout the NPRM. Most commenters expressed overwhelming support for the shift to longitudinal reporting on children entering, currently in and exiting foster care. Commenters also generally supported the idea that longitudinal data is more valuable and beneficial than current point-in-time data reporting for evaluating child welfare outcomes. However, several commenters expressed concerns about implementing a longitudinal methodology for AFCARS data with existing data systems and resources.

In response to the 2008 NPRM commenters expressed concern with our proposed expansion of the out-of-home care reporting population to include children who were under the placement and care responsibility of the title IV–E agency but whose only living arrangement was a juvenile justice facility. Commenters questioned how the title IV–E agency would obtain detailed information for AFCARS on the children in juvenile justice facilities. However, commenters did support collecting information on children in foster care who also are involved with the juvenile justice system. Commenters also opposed our proposal to consider a placement at home as a discharge because it could artificially inflate the rate of foster care re-entry if the child re-entered foster care after the placement at home.

Commenters in response to the 2008 NPRM generally supported our proposals to collect information on the child's prior adoptions and whether the child has siblings in out-of-home care or siblings who are adopted or in a legal guardianship. Commenters also supported our proposal to expand our collection of child and family circumstances that are present at the child's removal, but commenters opposed collecting that information at any point beyond removal. Commenters also requested that the AFCARS data elements incorporate kin as an additional relationship type between the child and/or the child's family and the foster parent(s), adoptive parent(s) or legal guardian(s). The section-by-section discussion of the proposed rule that follows in the preamble addresses public comments received in response to the 2008 NPRM and how they were considered in this proposed rule.

As we synthesized and analyzed comments from the 2008 NPRM, the President signed into law Public Law 110–351. As stated above, based in part on the significant statutory changes to the title IV–E program, we decided to issue a new NPRM rather than proceed with a final rule based on the 2008 NPRM. To inform our development of this NPRM, we requested comments through a **Federal Register** notice published on July 23, 2010 (75 FR 43187) (hereto referred as the 2010 FR Notice) and conducted another round of consultation sessions with States, Indian Tribes, Tribal organizations or consortia and other interested parties in the Summer and Fall of 2010.

Our consultation from the 2010 **Federal Register** (FR) Notice yielded 53 comments from the public, including State and local child welfare administrators, Indian Tribes, Tribal organizations or consortia, advocates, educators and researchers. During consultation we solicited feedback on

- Whether and how data collection and reporting requirements should change in order to provide a comprehensive national picture of children in foster care and those adopted with the involvement of the title IV–E agency;
- The circumstances under which a child should be included in the reporting population and the information the title IV–E agency should collect on children in its placement and care responsibility who are placed in settings other than foster family homes, group homes and child care institutions;
- The case level data on children in foster care, adoption and guardianship that is important to collect and report on an ongoing basis, including data that is not collected currently, that can inform and support Federal monitoring activities of the new provisions of title IV–E of the Act created by Public Law 110–351;
- The case level data on children in foster care that should be collected and reported that would provide insight into the environment and circumstances surrounding the child at removal, including why a child remains in foster care or why a child's permanency plan changes; and,
- What information should be collected about caseworker visits with a child.

Many commenters in response to the 2010 FR Notice echoed the support expressed by commenters to the 2008 NPRM to restructure AFCARS to support longitudinal data analysis in order to provide a comprehensive national picture of children who are involved with the title IV–E agency. Commenters to the 2010 FR Notice felt that it is important to include in the AFCARS out-of-home care reporting population and title IV–E guardianship and adoption assistance reporting population children age 18 or older who are involved with the title IV–E agency and to track accurately in AFCARS children who are in the placement and care responsibility of the Tribal title IV–E agency. However, commenters also expressed concern with the burden associated with reporting a longitudinal data file and additional data elements to AFCARS. Commenters to the 2010 FR Notice asked us to be clear about who would be included in each reporting population and asked that we consider aligning the AFCARS data elements with data elements from other data systems, such as the National Child Abuse and Neglect Data System

(NCANDS) and the National Youth in Transition Database (NYTD).

Some commenters to the 2010 FR Notice felt that most of the information associated with the new provisions created by Public Law 110–351 could be collected through case narratives in the child's record, rather than through AFCARS. Commenters also expressed that it would be difficult to capture comprehensive information in AFCARS on caseworker visits and the reasons why a child's permanency plan changes or, generally, why the child remains in foster care. Conversely, other commenters to the 2010 FR Notice highlighted specifically that it would be helpful to collect the same information on children who exit foster care to guardianship as children who exit foster care to adoption, whether the child has siblings in out-of-home care or siblings who have been adopted or are in a guardianship, and information relating to the educational stability of the child, such as the proximity of the child's school to the child's placement, the child's grade and the child's academic performance.

In developing this proposed rule, we considered these comments as well as comments to the 2008 NPRM. The section-by-section summary found later in this preamble provides more discussion on how specific comments factored into our proposal.

IV. Overview of Major Proposed Revisions to AFCARS

An overview of the major proposed revisions to AFCARS follows and includes many of the changes we proposed in the 2008 NPRM and other changes in response to the new statutory provisions of the Act resulting from Public Law 110–351.

References throughout this proposed rule to ''child'' or ''children'' are inclusive of all children who are served by the title IV–E program, including those age 18 or older. We are choosing to use a single reference, as opposed to using multiple references such as ''youth'' or ''young adult,'' because we believe it is less cumbersome and is easier to comprehend for the regulation.

Restructuring Data

We propose, as we did in the 2008 NPRM, to restructure the AFCARS data file in two ways, (1) to support longitudinal data analysis; and (2) to require title IV–E agencies to submit two data files an out-of-home care data file and an adoption and guardianship assistance data file.

Support Longitudinal Data Analysis

We propose that the out-of-home care data file contain longitudinal data elements that provide historical information on children who enter foster care; however, the adoption and guardianship assistance data file will not contain any longitudinal data elements. Title IV–E agencies are required to report in the existing AFCARS foster care data file some living arrangement, provider and permanency information relative to the child's most recent experiences in his or her most recent foster care episode only. We propose instead that title IV–E agencies collect and report historical information in the out-of-home care data file on (1) the date and circumstances of each of the child's removals and placements into foster care; (2) the type of environment the child was living in at the time of each of the child's removals and the title IV–E agency's authority for placement and care responsibility; (3) the date and type of each living arrangement the child experiences while in out-of-home care; (4) the demographics on each foster family home provider, if applicable; (5) information on each of the child's permanency plans and concurrent permanency plans, if applicable; (6) the date, location and purpose of each caseworker visit with the child; (7) each date that a petition to terminate parental rights (TPR) was filed and each TPR date; and (8) the date and reasons of each of the child's exits from out-of-home care.

We received many comments in response to both the 2008 NPRM and the 2010 FR Notice on our proposal to require title IV–E agencies to report recent and historical data on children who enter foster care. Commenters to both the 2008 NPRM and the 2010 FR Notice overwhelmingly expressed support for the shift to longitudinal data reporting on children entering, currently in and exiting foster care and were generally supportive of the idea that longitudinal data is more valuable and beneficial than current point-in-time data for evaluating child outcomes. However, several commenters to both the 2008 NPRM and the 2010 FR Notice expressed concerns with implementing a longitudinal methodology for AFCARS with existing data systems and resources. Specific concerns included that some title IV–E agencies' data systems do not fully support longitudinal information for children placed in non-foster care settings who are never placed in foster care, the impact of the new historical AFCARS data set on current foster care metrics (*e.g.,* placement stability, foster care episode duration and the title IV–E penetration rate) and whether and/or how adjustments will be made to account for new rules in trend analysis and a general concern for the quality of the historical data. Commenters to the 2008 NPRM also requested clarification and technical assistance on the logistics surrounding the submission of a historical data file and making the substantial system changes and adjustments that title IV–E agencies will need to make in order to comply with the revised AFCARS rules.

We recognized the concerns expressed by the commenters to both the 2008 NPRM and the 2010 FR Notice and used them to modify and clarify our proposal for longitudinal data analysis in this NPRM. We believe there is substantial support for our proposal, which also was reinforced by some commenters acknowledging that their title IV–E agencies have collected longitudinal data on children in foster care for many years and have used the longitudinal data to conduct complex analysis on their foster care populations. Since the publication of the 2008 NPRM, several State title IV–E agencies have implemented a comprehensive case management information system that supports the collection and storage of all information relevant to a child's out-of-home care experience. Additionally, enhancements in the title IV–E agency's case management system to support new data collection requirements may be eligible for SACWIS development funding. We have been and will continue to work with Tribal title IV–E agencies as they develop information systems that will be used to support their title IV–E program and to meet the data collection requirements of AFCARS. We believe the anticipated benefits of obtaining longitudinal data are vast and include the elimination of information gaps that exist in the current AFCARS data, which raise questions about the child's experiences and make the data more difficult to analyze, better information for the CFSRs or other Federal monitoring efforts and the building of our ability to conduct sophisticated analysis on a child's or groups of children's experience in foster care. Thus, based on the supportive comments to both the 2008 NPRM and the 2010 FR Notice and the anticipated benefits, we continue to propose restructuring AFCARS in order to support longitudinal data analysis by capturing more comprehensive information on the experiences of children who are placed in foster care.

AFCARS Data Files

As in the 2008 NPRM, we propose to eliminate a number of features in the AFCARS regulation that are no longer useful to us or the title IV–E agencies. We propose to dispose of the requirement for title IV–E agencies to report summary foster care and adoption data files and to merge the information on adoptions into the out-of-home care data file. Currently, title IV–E agencies must submit four data files (see appendices A and B to part 1355) a foster care data file with information on all children in foster care under the responsibility of the title IV–E agency or another public agency with an agreement with the title IV–E agency, an adoption data file with information on all children adopted during the report period in whose adoption the title IV–E agency had some involvement and two summary data files in which the title IV–E agency indicates aggregate numbers of foster care records and adoption records and the age distribution of the children in each of those records. Summary data files are no longer necessary due to advances in technology that better verify the completeness of data submissions; commenters to the 2008 NPRM were appreciative and supportive of this proposal.

Our proposal continues the 2008 NPRM proposal of including most of the information from the existing foster care and adoption data file in one data file, called the out-of-home care data file, as well as adding a new data file, called the title IV–E adoption and guardianship assistance data file, to report information on children who are in a finalized adoption or legal guardianship under a title IV–E adoption or guardianship assistance agreement and on the agreement itself. Our current proposal for the title IV–E adoption and guardianship assistance data file differs slightly from the 2008 NPRM where we proposed to collect information on the adoption assistance agreement (both title IV–E and State funded) and a guardianship subsidy (State and title IV–E funded, if the State had an approved demonstration waiver). We did not receive substantive comments in response to the 2008 NPRM on this proposal. Generally, we propose in this NPRM to collect the same information, if applicable, on adoptions and legal guardianships. The new data file structure will most likely eliminate the need to resubmit prior data files since the out-of-home care data file will now include historical information on the child's current and prior removals and out-of-home care episodes; any identified data corrections may occur either in the title IV–E agency's corrective data file (described in section 1355.45) or in the data file due at the next regular six-month report period.

We also continue our proposal to remove information on technical submission requirements from the regulation. These major changes we propose to make to AFCARS will reduce the burden associated with submitting two additional data files, will provide a logical flow of data for the child's entire out-of-home care episode in one file and will provide the title IV–E agencies and us with flexibility to keep the pace with newer technology. These changes, along with all other features of the proposed database, are detailed in the section-by-section discussion found later in this preamble.

Reporting Populations

This NPRM proposal is very similar, for the most part, to current AFCARS practice regarding reporting populations. We propose that the out-of-home care reporting population include a child of any age who is placed in foster care as defined at 45 CFR 1355.20 or a child who has run away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV–E agency. The out-of-home care reporting population continues to include a child who is under the placement and care responsibility of another public agency that has an agreement with the title IV–E agency pursuant to section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium with which the title IV–E agency has an agreement or contract and on whose behalf title IV–E foster care maintenance payments are made.

Based on the comments we received in response to the 2008 NPRM, we propose an out-of-home care reporting population that is closer to the current AFCARS foster care reporting population than to that proposed in the 2008 NPRM. In the 2008 NPRM we proposed an expanded out-of-home care reporting population that would have included every child under the State's age of majority placed away from his or her parents or legal guardians for 24 hours or more for whom the title IV–E agency has placement and care responsibility regardless of the child's living arrangement, including a child whose only placement was in a non-foster care setting such as a detention facility, hospital or jail. In the 2008 NPRM, we proposed that a child who returns home while still in the title IV–E agency's placement and care responsibility no longer be included in the AFCARS out-of-home care reporting population and the child would be reported as having exited from out-of-home care. We now propose that the child remain in the out-of-home care reporting population until the title IV–E agency no longer has placement and care responsibility; *i.e.,* a child remains in the out-of-home care reporting population through the end of the report period in which the title IV–E agency's placement and care responsibility ends.

We propose that the adoption and guardianship assistance reporting population include any child who is in a finalized adoption under a title IV–E adoption assistance agreement with the title IV–E agency pursuant to section 473(a) of the Act and any child who is in a legal guardianship under a title IV–E guardianship assistance agreement with the title IV–E agency pursuant to section 473(d) of the Act. A child remains in the title IV–E adoption and guardianship assistance reporting population through the end of the report period in which the agreement ends or is terminated.

As previously noted, we propose that the AFCARS data file no longer include an adoption data file. The existing AFCARS adoption data file not only includes information on children who were adopted from foster care, but also those who were adopted through a private agency and in whose adoption the title IV–E agency had any involvement. We proposed in the 2008 NPRM that the title IV–E agency report in the out-of-home care data file additional information on children exiting out-of-home care to a finalized adoption. We also proposed that the title IV–E agency report in the adoption and guardianship assistance file information on children who were adopted from a private agency on whose behalf the title IV–E agency is paying an adoption subsidy or providing services. Our current proposal for the adoption and guardianship assistance reporting population differs from the adoption assistance and guardianship subsidy reporting population proposed in the 2008 NPRM which would have included any child under a title IV–E or State adoption assistance agreement in effect during the report period, including children in pre-adoptive homes and any child under a subsidized guardianship agreement supported by State and/or title IV–E funds, if the State had an approved demonstration waiver.

We modified our proposal for both the out-of-home care reporting population and the adoption and guardianship

assistance reporting population due to the many comments and feedback we received in response to the 2008 NPRM proposal and 2010 FR Notice. Commenters were generally concerned that title IV–E agencies would be held accountable for the timeliness and accuracy of AFCARS information on children that had to be gathered from various sources outside of the title IV–E agency's control (*e.g.,* juvenile justice agencies). Commenters also were concerned regarding our proposal to exclude from the reporting population children placed at home, stating that excluding these children would require changes to systems related to title IV–E determinations and funding, would create disincentives to responsive child welfare practices, would erroneously inflate the actual number of foster care entries and exits of a child and would not be reflective of many States' mandates to consider such children as in foster care. In addition, ACF is required under section 479(c)(3) of the Act to capture information on adopted children, including demographics and information on the child and child's adoptive parents. While there is no statutory mandate to collect similar information on children who have achieved permanency through legal guardianship, we propose to collect the same information on these children and their legal guardian(s) because we have the same need for information on children who are supported by title IV–E funding, per section 473(d) of the Act. We believe that our current proposal for the out-of-home care reporting population and the adoption and guardianship assistance reporting population will address the issues expressed by the commenters.

Capturing Greater Detail

We propose to add and clarify the type of case-level information collected on children who enter foster care and children who are under a title IV–E adoption or guardianship assistance agreement. These changes are designed to permit enhanced analyses of the factors that may affect a child's permanency and to incorporate data elements that capture the provisions of Public Law 110–351. The changes include:

- Revised data elements designed to better capture the circumstances affecting the child and family at the time of removal;
- Revised data elements to better describe the child's environment at removal and the location and type of living arrangements in which children are placed by the title IV–E agency;
- New data elements on caseworker visits with children in foster care;
- New data elements that allow us to identify minor parents who have their children with them in foster care, sibling groups and whether or not siblings are placed together;
- Revised data elements that enhance our understanding of permanency planning for children in foster care, including new data elements that identify why a child's permanency plan changes, the child's concurrent permanency plans and the child's transition plan;
- New data elements that inform us about the child's well-being, including the child's educational level, educational stability and involvement with special education, as well as clarified data elements on the child's health, behavioral and mental health conditions;
- Revised data elements that enhance our understanding of prior adoptions and legal guardianships, as well as the child's exit to a new adoption or legal guardianship; and,
- Revised and new data elements designed to capture the number and characteristics of children who are in finalized adoptions and legal guardianships under title IV–E adoption and guardianship assistance agreements as well as information in the child's title IV–E adoption or guardianship assistance agreement, including the amount of the subsidy and nonrecurring costs.

We received many supportive comments in response to both the 2008 NPRM and 2010 FR Notice on our proposal to capture greater detail on children who enter foster care and children who are under a title IV–E adoption or guardianship assistance agreement. Some commenters in response to the 2008 NPRM requested that we clarify our proposal for a number of data elements and we have made every effort to address those requests. We explain how individual comments factored into each data element in the section-by-section discussion of the NPRM found later in this preamble.

Improving Data Quality

As in our 2008 NPRM, we propose to improve AFCARS data quality in several ways. First, we propose to clarify and modify many existing data element descriptions that stakeholders and commenters to the 2008 NPRM and 2010 FR Notice informed us were problematic. Second, we propose to strengthen our assessment and identification of errors within a title IV–E agency's data file through cross-file checks to identify defaults and other faulty programming that result in skewed data across a title IV–E agency's entire data file, increased internal consistency checks to validate the logical relationship between data elements, and modified requirements for missing data and invalid data within a data file. Finally, we propose to implement penalties consistent with section 474(f) of the Act for title IV–E agencies that do not meet our data file and data quality standards for AFCARS.

Burden

Commenters in response to the 2008 NPRM proposal and the 2010 FR Notice expressed some concern over the burden associated with reprogramming their information systems to collect and report additional data elements. Many of the commenters in response to the 2008 NPRM and 2010 FR Notice raised concerns about the ambiguity of the definitions for the data elements and the value of the additional data elements. We are cognizant of the potential burden associated with requiring title IV–E agencies to submit additional information to AFCARS, and of the requirement in section 479(c)(1) of the Act that instructs that AFCARS ''avoid unnecessary diversion of resources from agencies responsible for adoption and foster care.'' We recognize that regardless of the amount and type of information that will be in the final rule, the title IV–E agencies will have to write new extraction routines to report the AFCARS data. Throughout the process of drafting this proposed rule, we considered the burden of inputting the information and programming that may be associated with the addition of each new data element and we critically weighed the advantages of each data element proposed here against the potential increased burden to title IV–E agencies. We tried, as we did in the 2008 NPRM, to ask for information that caseworkers collect as part of their normal work duties and that is already collected in the majority of State title IV–E agency information systems. We recognize that Tribal title IV–E agencies have not collected this data previously but we have been providing support to Tribal title IV–E agencies as they consider developing an information system that will meet their needs. We will continue to provide intensive technical assistance to both State and Tribal title IV–E agencies once the final rule for AFCARS is published.

In response to the comments we received from both the 2008 NPRM and 2010 FR Notice, we did not include a number of data elements that we proposed in the 2008 NPRM, namely

data elements regarding family record numbers; child and family circumstances at the initial permanency plan, annually and at exit; information on the language of the child and foster parent(s); the marital status of the mother at birth and the biological parents at removal; and specific information about the people whom the child was living with at removal. Additionally, we propose to remove the requirement for title IV–E agencies to submit summary data files and combine or remove data elements that capture duplicative information.

Compliance and Penalties

We propose to define the standards and manner by which we assess and determine compliance on each data file submitted by the title IV–E agency, permit the opportunity for corrective action by the title IV–E agency and if necessary, assess a penalty for the title IV–E agency's continued noncompliance with AFCARS requirements. We propose to apply compliance standards to both the out-of-home care data file and the adoption and guardianship assistance data file, with exceptions for optional provisions of title IV–E. Specifically, we do not propose to apply the compliance standards to children in either data file who are age 18 or older and/or children in the adoption and guardianship assistance data file who are in a legal guardianship under a title IV–E guardianship assistance agreement. For the remaining children in each reporting population, we propose to assess each data file for errors such as missing, invalid or internally inconsistent data, cross-file errors and tardy transactions. The title IV–E agency must submit each data file to ACF on or before the reporting deadline, in the proper format and free of cross-file errors.

We propose to implement penalties for title IV–E agencies that do not meet our data compliance and data quality standards. We propose that the pool of funds that are subject to a penalty for noncompliance be the title IV–E agency's claims for title IV–E foster care administrative costs (including training) for the quarter in which each original data file is due (as opposed to the corrected data file), consistent with section 474(f) of the Act and the 2008 NPRM proposal.

Many commenters in response to the 2008 NPRM proposal and 2010 FR Notice requested tolerance for errors related to the collection and reporting of demographic data elements due to concerns about meeting compliance standards for these elements. Many commenters to both the 2008 NPRM and 2010 FR Notice also expressed concern with the proposed penalty structure. Some commenters requested that we provide incentives in addition to or in lieu of penalties, vary penalties by degrees of non-compliance and phase-in or delay the implementation of penalties. We believe that the compliance standards and penalty structure we are proposing will ultimately increase the quality of the data that is collected and reported by title IV–E agencies.

Implementation of changes to AFCARS described in this NPRM will be dependent on the issuance of a final rule. We expect provisions in an eventual final rule to be effective no sooner than the start of the second Federal fiscal year following the publication of the final rule. A precise effective date will be dependent on the publication date of the final rule, but this construct provides title IV–E agencies with at least one full year, and possibly longer, before we will require them to begin collecting and reporting new AFCARS data. We welcome public comments on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the final rule.

V. Section-by-Section Discussion of NPRM

Section 1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System

In section 1355.40, we propose to revise the statement of scope for AFCARS. The proposed scope statement explains which entities must report data to ACF and what data those entities must report.

Section 1355.40(a)

In paragraph (a), we propose that all title IV–E agencies collect and report AFCARS data to ACF. This is consistent with our legislative authority in section 479 of the Act. Currently, all States, the District of Columbia and Puerto Rico operate title IV–B and IV–E programs. As a result of Public Law 110–351, Indian Tribes, Tribal organizations or consortia can now administer title IV–E programs directly and those that do so are required to collect and report AFCARS data.

Section 1355.40(b)

In paragraph (b), we propose to revise the general parameters for collecting and reporting AFCARS data. We propose that a title IV–E agency collect and submit to us information for the reporting populations proposed in new section 1355.41 and that the information must be submitted to us on a semi-annual basis in an out-of-home care data file and an adoption and guardianship assistance data file as required in proposed new section 1355.42. This information includes a child's demographics and characteristics, removal, living arrangements and experiences in out-of-home care, as well as the nature of finalized title IV–E adoptions and guardianships and information on title IV–E adoption and guardianship assistance agreements.

Current AFCARS regulations require title IV–E agencies to report data in the foster care data file on a child's demographics, most recent removal and circumstances of that removal, current placement settings, permanency goals and Federal assistance. In the current AFCARS adoption data file, we collect information on a child's demographic information, special needs status, birth and adoptive parent(s), placement information and adoption support. While we propose to continue to require reporting of some of the same data that is currently collected in the foster care and adoption data files in the out-of-home care data file, we now propose requiring a title IV–E agency to report information on legal guardianship and other topics, as detailed below.

In the 2008 NPRM we proposed to expand the scope of certain information title IV–E agencies must report in the out-of-home care data file to include a child's entire historical and current experience in out-of-home care in order to establish a more comprehensive and longitudinal database. Because comments on the 2008 NPRM and the 2010 FR Notice were generally supportive of the move to a longitudinal database and because the existing data does not meet our program needs, we again propose to expand the scope of information. As in the 2008 NPRM, we propose to collect information on education, concurrent planning and demographic information on a child's adoptive parents in the out-of-home care data file. For the first time, we propose to collect information on caseworker visits. We also propose to collect information on a child's adoption assistance agreement in the adoption and guardianship assistance data file, as in the 2008 NPRM. However, because we have the same need for information on children supported by title IV–E guardianship assistance program, we also propose to collect equivalent information on a child's title IV–E guardianship assistance agreement.

Section 1355.41 Reporting Populations

In new section 1355.41, we propose the reporting populations for the AFCARS out-of-home care and adoption and guardianship assistance data files. The definition of each reporting population describes which children the title IV–E agency is required to collect and report information on in each respective data file.

Section 1355.41(a) Out-of-Home Care Reporting Population

In paragraph (a), we explain our proposed out-of-home care reporting population. A child who enters the out-of-home care reporting population continues in the population until placement and care responsibility ends.

In paragraph (a)(1), we propose at what point a child enters the out-of-home care reporting population. We also propose that the title IV–E agency must report data as described in section 1355.43 on each child for whom the title IV–E agency has placement and care responsibility and who meets one of the conditions in paragraphs (a)(1)(i) through (a)(1)(iii) .

In paragraphs (a)(1)(i) through (a)(1)(iii), we further clarify the out-of-home care reporting population.

In paragraph (a)(1)(i), we specify that the child enters the out-of-home care reporting population if he or she is in foster care as defined in section 1355.20, which defines foster care as 24-hour substitute care for any child placed away from his or her parent(s) or guardian(s) and for whom the title IV–E agency has placement and care responsibility. This includes instances when a child has been placed in a foster care setting following placement in a non-foster care setting.

In paragraph (a)(1)(ii), we specify that the out-of-home care reporting population includes any child who is under the placement and care responsibility of another public agency that has an agreement under section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium that has a contract or agreement, with the title IV–E agency to pay title IV–E foster care maintenance payments on the child's behalf.

In paragraph (a)(1)(iii), we specify that a child enters the out-of-home care reporting population if he or she has run away or his or her whereabouts are unknown at the time that the title IV–E agency receives placement and care responsibility for the child.

The proposal for paragraphs (a)(1)(i) and (a)(1)(iii) differ from both current AFCARS foster care reporting population and the out-of-home care reporting population proposed in the 2008 NPRM. The foster care reporting population in existing AFCARS regulations includes all children who are in foster care for more than 24 hours under the responsibility of the State agency administering or supervising the administration of the title IV–B Child and Family Services Plan (CFSP) and the State title IV–E plan, that is, all children who are required to be provided the assurances in section 422(b)(10) of the Act. The existing AFCARS foster care reporting population includes children at the time they enter foster care as defined in 45 CFR 1355.20. In the 2008 NPRM, we proposed a new and expanded out-of-home care reporting population to include every child under the State's age of majority placed away from his or her parent(s) or legal guardian(s) for 24 hours or more for whom the State title IV–E agency had placement and care responsibility regardless of the child's living arrangement. This included a child whose only placement while under the placement and care responsibility of the title IV–E agency was in a non-foster care setting such as a detention facility, hospital or jail. Many commenters to the 2008 NPRM proposal felt the definition was too broad. States were particularly concerned about the burden of having to gather data from other State systems that serve a child in a juvenile justice, mental health or hospital setting. Commenters to the 2010 FR Notice expressed similar concerns about data collection and staff burden. We considered the comments to both the 2008 NPRM and the 2010 FR Notice and modified the out-of-home care reporting population definition in proposed section 1355.41(a)(1) to address these concerns. This proposal is similar to the foster care reporting population in the existing AFCARS in that those children whose only placement is a non-foster care setting (*e.g.,* juvenile justice, mental health or hospital facility) would not be part of the out-of-home care reporting population. Additionally, those children who are placed initially in a non-foster care setting and then enter foster care as defined in 45 CFR 1355.20 are considered to be removed as of the start date of the child's placement into foster care.

The proposal for paragraph (a)(1)(ii) is similar to the existing AFCARS regulations that define the foster care reporting population (Appendix A to part 1355, section II). All title IV–E agencies can enter into agreements/contracts with Indian Tribes, Tribal organizations or consortia and agreements with separate public agencies such as juvenile justice or mental health agencies in order to claim title IV–E on behalf of title IV–E eligible children. These other public or Tribal entities with which the title IV–E agency has an agreement do not submit information on children in the reporting population to ACF separately from the title IV–E agency. Rather, information on children under the placement and care responsibility of an agency that has an agreement with the title IV–E agency must be a part of the title IV–E agency's AFCARS data submission.

In existing AFCARS policy, the title IV–E agency is required to report on all children up to the State's age of majority and a child of any age that is eligible for and receiving a title IV–E payment. We propose to modify the AFCARS reporting population to include a child of any age for whom the title IV–E agency has placement and care responsibility when such a child has been placed in foster care in accordance with the regulatory definition of foster care in section 1355.20. We propose to include a child of any age in the out-of-home care reporting population to be consistent with the changes in Federal law per the enactment of Public Law 110–351, which amended section 475(8)(B) of the Act. Section 475(8)(B) now provides the option for title IV–E agencies to adopt a definition of ''child'' for the title IV–E foster care program that allows title IV–E reimbursement for an eligible child up to age 21 who meets certain education and employment conditions. We propose the out-of-home care reporting population to include a child of any age that meets the conditions in paragraphs 1355.41(a)(1)(i) through (a)(1)(iii) whether or not the child receives a payment that is federally subsidized because this will allow us to establish a more comprehensive and longitudinal national database on all children in out-of-home care.

We modified the out-of-home care reporting population from the existing AFCARS regulation by including those children for whom the title IV–E agency has placement and care responsibility but who have runaway or whose whereabouts are unknown at the time that the title IV–E agency receives placement and care responsibility for the child. We propose this modification to update the regulation to incorporate current AFCARS practice regarding a child who has runaway or whose whereabouts are unknown.

As we did in the 2008 NPRM, we want to clarify that the proposed out-of-home care reporting population does not include children who are under the

title IV–E agency's ''supervision'' authority, unlike the current regulation. We found the reference to ''supervision'' problematic because we never defined the term ''supervision'' further in AFCARS regulations or policy. We have received questions about whether the existing AFCARS foster care reporting population includes children in a variety of settings for whom the title IV–E agency has only a legal duty to supervise with no concurrent placement and care responsibility. To be clear, children who are receiving only services in the homes of their parent(s) or legal guardian(s) and children who may be placed away from their parent(s) or legal guardian(s) but for whom the title IV–E agency has no placement and care responsibility (*e.g.,* placed in a juvenile justice or mental health facility) are not a part of the proposed AFCARS out-of-home care reporting population.

In paragraph (a)(2), we clarify that once a child enters the out-of-home care reporting population he or she remains in the out-of-home care reporting population through the end of the report period in which the title IV–E agency's placement and care responsibility ends, regardless of any subsequent living arrangement while in out-of-home care. For example, we propose to continue including in the out-of-home care reporting population a child who moves from a placement in a foster care setting to a non-foster care setting such as a detention facility, hospital or jail. We also propose to include in the out-of-home care reporting population a child whose whereabouts are unknown or a child who runs away, a child who has returned home and is placed with his or her parent(s) or legal guardian(s) under the continued placement and care responsibility of the title IV–E agency, or, a child age 18 or older who is living independently. In these situations, the child remains under the title IV–E agency's placement and care responsibility and therefore these children must be included in the out-of-home care reporting population.

We propose to require the title IV–E agency to continue to report information on all of a child's placements once he or she enters the out-of-home care reporting population including various out-of-home care placement settings that are outside of the definition of foster care. Including a child's placement in non-foster care settings such as a detention facility, hospital or jail will permit title IV–E agencies and ACF to complete longitudinal analyses of a child's total out-of-home care experience, as advocated by States and others in the field.

In the 2008 NPRM, we proposed to discontinue reporting AFCARS data for a child who is returned home to his or her parent(s) or legal guardian(s), and considered such a child to have exited the out-of-home care reporting population even if the child remained under the placement and care responsibility of the title IV–E agency. This proposal was a reversal from current AFCARS requirements which indicate that a child placed at home with his or her parent(s) or legal guardian(s) may be included in the foster care reporting population, but would be considered discharged for AFCARS purposes automatically after six months. Some commenters to the 2008 NPRM opposed our proposal and many felt strongly that children who are placed at home under the placement and care responsibility of the title IV–E agency should remain in the out-of-home care reporting population, as they felt that considering a placement at home as a discharge would artificially inflate the rate of foster care re-entry if the child moved to a foster care setting after the placement at home. After considering these comments, we agree that we want to collect data on all children once they have entered the out-of-home care reporting population until the title IV–E agency's placement and care responsibility ends. Therefore, we propose that any child who enters the out-of-home care reporting population remain in the out-of-home care reporting population until the title IV–E agency's placement and care responsibility for the child ends.

In paragraph (a)(3), we propose that for AFCARS purposes, an out-of-home care episode is defined as the period between a child's entry into the out-of-home care reporting population and the date the title IV–E agency's placement and care responsibility ends. If the title IV–E agency returns the child home to live permanently with his or her parents or legal guardians and placement and care responsibility ends, the child exits the out-of-home care reporting population.

The existing AFCARS regulations consider a child to have exited foster care when he or she is legally discharged from the title IV–E agency's placement and care responsibility. The child exits the foster care reporting population for AFCARS purposes and completes an out-of-home care episode in these circumstances. Our current proposal differs from the existing AFCARS regulation and the 2008 NPRM proposal, which proposed that the title IV–E agency discontinue reporting a child to AFCARS if the child is placed at home with his or her parents, even if the child remains under the placement and care responsibility of the title IV–E agency. Many States over the years have highlighted the need for more definitive guidance on when the child should be considered to have exited the AFCARS foster care reporting population so we are proposing the end of the placement and care responsibility as the point at which a child exits the out-of-home care reporting population.

Section 1355.41(b) Adoption and Guardianship Assistance Reporting Population

In paragraph (b), we explain our proposed reporting population for the adoption and guardianship assistance data file.

In paragraph (b)(1) we propose that the title IV–E agency must report data as described in section 1355.44 on each child who meets one of the conditions in the paragraphs (b)(1)(i) or (b)(1)(ii).

In paragraph (b)(1)(i), we propose to require the title IV–E agency to report information required by section 1355.44 on any child for whom there is a finalized adoption under a title IV–E adoption assistance agreement (per section 473(a) of the Act) with the reporting title IV–E agency that is or was in effect at some point during the report period. The existing AFCARS regulation does not include an adoption and guardianship assistance data file. In the existing AFCARS regulation, title IV–E agencies report in the adoption file on any child adopted in the State during the report period, in whose adoption the title IV–E agency had any involvement. Our current proposal differs from the reporting population for the existing AFCARS adoption data file and the reporting population proposed in the 2008 NPRM for the adoption and guardianship subsidy data file. In the 2008 NPRM we proposed that title IV–E agencies report on any child with a title IV–E adoption assistance agreement or a State adoption assistance agreement in effect during the report period, including children in pre-adoptive homes. Unlike the 2008 NPRM, we do not propose to include a child in a pre-adoptive living arrangement in the adoption and guardianship assistance reporting population.

We received comments to the 2008 NPRM and 2010 FR Notice suggesting concern about barriers to obtaining ongoing information about a child post-adoption. States were particularly concerned about intrusiveness, inability and lack of authority to gather this data. To address some of these comments, and in an effort to eliminate duplicate information in the AFCARS files in paragraph (b)(1), we now propose to

limit the reporting population of the adoption and guardianship assistance data file to include only those children with finalized adoptions who are under title IV–E adoption assistance agreements. We propose to collect this information to supplement, rather than duplicate, data collected upon exit to adoption in proposed section 1355.43(h). Further, we only are collecting ongoing information on children under title IV–E adoption assistance agreements to remain within the scope of AFCARS described in section 1355.40. Information collected will be limited to basic demographic information on the adopted child, as well as information regarding the title IV–E adoption arrangement and assistance agreement in effect during the report period. Several State responders to the 2010 FR Notice commented that title IV–E agencies should not have to collect data on finalized adoptions. However, we cannot make this change as we are statutorily required, per section 479(c)(3) of the Act, to capture information on adopted children, including demographics and information about the child's title IV–E adoption from the assistance agreement. We anticipate that collecting this information will not increase burden significantly, as the child's demographic data and basic information related to the title IV–E agreement should not change between report periods and will not require updating by caseworkers. Similarly, information about updates to IV–E adoption and guardianship assistance payments should already be captured elsewhere in the title IV–E information system and should not require manual updates.

We are not proposing to include information on a child in a pre-adoptive placement in this data file, although he or she may have a title IV–E agreement and receive title IV–E adoption assistance before the adoption finalization. This information continues to be collected in the out-of-home care data file and the title IV–E agency must report information on the child's pre-adoptive living arrangement in proposed section 1355.43(e).

We propose to include a child in a finalized adoption under a title IV–E adoption assistance agreement in the adoption and guardianship assistance reporting population regardless of whether a financial subsidy is paid on the child's behalf. For example, a title IV–E agency would include in this reporting population a child with a finalized adoption under a title IV–E adoption assistance agreement that contains a subsidy amount of $0, for the purposes of receiving only Medicaid assistance.

With the increased activity in adoption and the corresponding outlays for the program, there has been an increase in requests for information from Congress, States, the media and other sources, regarding the population of adopted children receiving title IV–E assistance. In addition, section 479(c) of the Act mandates that we collect information on the extent and nature of assistance provided by Federal adoption programs and the characteristics of the child with respect to whom such assistance is provided. Although we propose for a title IV–E agency to report only children with finalized adoptions under title IV–E agreements in the adoption and guardianship assistance data file, we believe that the information proposed here in conjunction with the information proposed in paragraphs 1355.43(e) through (h) of the out-of-home care data file may present a more comprehensive picture of adoptions supported through the title IV–E program.

In paragraph (b)(1)(ii), we propose to collect the information in section 1355.44 on any child in a legal guardianship who is under a title IV–E guardianship assistance agreement, pursuant to section 473(d) of the Act, with the reporting title IV–E agency that is or was in effect at some point during the current report period. Information on each child adopted with the involvement of the title IV–E agency is currently reported to AFCARS, but no information is collected regarding children in legal guardianships. In the 2008 NPRM we proposed to collect limited information on any child on whose behalf a guardianship assistance payment was made pursuant to a title IV–E or State assistance agreement with the title IV–E agency. At the time the 2008 NPRM was published, the only subsidized guardianships under title IV–E were those in States with demonstration waivers.

We propose to collect information on any child in a legal guardianship receiving title IV–E guardianship assistance to gather data on children supported through the title IV–E guardianship assistance program established via changes to section 473(d) of the Act made by Public Law 110–351 in October 2008. To date, 31 title IV–E agencies have applied to participate in the title IV–E guardianship assistance program and additional title IV–E agencies may do so in the future. Comments to the 2008 NPRM, which pre-dated title IV–E authority for title IV–E guardianship assistance payments, were mixed regarding the proposal to collect information about children in legal guardianships on an ongoing basis. Some commenters believed this information was among the most helpful enhancements proposed for AFCARS while others had concerns about intrusion into the lives of guardianship families and the agency's ability to collect accurate data on these families. We received similar comments to the 2010 FR Notice from several States opposed to collecting data on legal guardianships. States were particularly concerned about intrusiveness, inability and lack of authority to gather the data. To address some of these concerns, we modified our proposal in paragraph (b)(2) to limit the adoption and guardianship assistance reporting population to only those children who are in a legal guardianship under a title IV–E guardianship assistance agreement, rather than all children receiving State or Federal guardianship assistance. In addition, we propose to collect only basic demographic information and information readily accessible regarding the child's title IV–E guardianship arrangement and assistance agreement in effect during the report period. As such, there is minimal intrusion on the legal guardian(s), if any, and the title IV–E agency has ready access to the information requested via the title IV–E guardianship assistance agreement.

While there is no statutory mandate to collect information for children who have achieved permanency through legal guardianship, unlike that for adoption, we propose to collect this limited information because we have the same need for information on children supported by title IV–E funding, per section 473(d) of the Act as we do for adopted children. Title IV–E agencies are currently required to collect and report financial information for children under title IV–E guardianship assistance agreements per Form CB–496, in the same manner that title IV–E agencies are to report information on children under title IV–E adoption assistance agreements. While we receive aggregate information on number of guardianships and average subsidy amounts through Form CB–496, we propose to collect child-level information on guardianships through AFCARS to conduct more nuanced data analysis on the characteristics of children under title IV–E guardianship assistance agreements.

Commenters to the 2008 NPRM also expressed concern with using the term ''legal guardian'' because States may use different terms in practice. This is no longer an issue since the guardianship

assistance data file is comprised of children under a relative legal guardianship per section 473(d) of the Act and the statute defines the term ''legal guardianship'' in section 475 of the Act.

In paragraph (b)(2), we clarify that a child remains in the adoption and guardianship assistance reporting population through the end of the report period in which the title IV–E agreement ends or is terminated. Neither the current AFCARS regulations nor the 2008 NPRM proposal include such clarification regarding the circumstances under which a child exits the reporting population for this data file. We propose to include this information to respond to commenters to the 2008 NPRM who requested clarification on the circumstances of exit for the adoption and guardianship assistance reporting population, and length of time title IV–E agencies are required to collect information on a child in this reporting population.

Section 1355.42 Data Reporting Requirements

We propose to add a new section 1355.42 on data reporting requirements, including specifying the report periods for the data files, general provisions for collecting and submitting the out-of-home care and adoption and guardianship assistance data files and record retention rules to comply with AFCARS requirements. This section was first proposed in the 2008 NPRM.

Section 1355.42(a) Report Periods and Deadlines

In paragraph (a), we propose that each title IV–E agency submit an out-of-home care data file and an adoption and guardianship assistance data file to ACF on each child in the reporting populations on a semi-annual basis. The two six-month report periods are from October 1 to March 31 and from April 1 to September 30 of each Federal fiscal year. These report periods are the same as in the existing AFCARS, and also were proposed in the 2008 NPRM.

In consultations held prior to the publication of the 2008 NPRM, there were several suggestions that we consider moving to annual, or even less frequent reporting, rather than semi-annual reporting of AFCARS data. Specifically, in the consultations held prior to the 2008 NPRM, commenters were concerned that ACF would be unable to compile an annual data file from two semi-annual submissions for the purposes of the current CFSRs and the annual outcomes report to Congress. However, we can assure title IV–E agencies that our software currently allows us to create an annual data file for these purposes. We also expect that the new requirements proposed for using a permanent and encrypted person identification number (sections 1355.43(a)(4) and 1355.44(a)(3)) will aid both our own and title IV–E agencies' ability to create annual data files. ACF explained the rationale for proposing to maintain semi-annual submissions for AFCARS in greater detail in the preamble of the 2008 NPRM (73 FR 2088).

We also propose in paragraph (a) that title IV–E agencies submit their data files to us within 30 calendar days of the end of the report period. Therefore, a title IV–E agency will be required to submit AFCARS data files to ACF every year by April 30 and October 30. If this date falls on a weekend, the title IV–E agency must submit the data files by the end of the following Monday. This is a change both from the current AFCARS, which allows a 45 day period in which agencies are required to submit their data files to ACF and from the 2008 NPRM where we proposed a 15 day submission deadline. Commenters to the 2008 NPRM believed that 15 days was an insufficient amount of time to prepare and submit data files. We noted these concerns and extend the proposed submission deadline to 30 days. We believe that a 30 day timeframe is workable and also will better meet title IV–E agency and Federal needs for data for the reasons described below.

AFCARS data is used extensively in a number of ACF priorities and requirements, including the current CFSRs and other monitoring efforts. If ACF receives AFCARS data closer to the end of the report period than we do now, this data may be available sooner to support analysis, which can be used to develop change and/or improvement initiatives. Also, because Adoption and Legal Guardianship Incentive funds are tied to how well States perform in increasing their rate of adoptions and legal guardianships as seen in the AFCARS data (section 473A(c)(2) of the Act), receiving this information more quickly can help to prevent delays in the awarding of incentive funds to States. The vast improvements in automation in the field of child welfare strengthen our belief that a title IV–E agency can prepare data files within 30 days. Many title IV–E agencies now have the ability to record and verify data in a more timely fashion than when the original AFCARS regulation was issued in 1993 (58 FR 67924). Finally, we have provided significant technical assistance to title IV–E agencies to encourage ongoing quality assurance checks on the data recorded in their information systems. We believe that title IV–E agencies will be able to meet this shorter time frame for submitting data with continued and routine use of our data quality utilities.

Finally, in paragraph (a) we require that title IV–E agencies submit their data to us in two separate data files: (1) Out-of-home care; (2) adoption and guardianship assistance. Currently, agencies must submit four data files (Appendices A and B to 45 CFR 1355): (1) A detailed foster care data file with information on all children in foster care during the report period; (2) a detailed adoption data file with information on all children adopted during the report period in whose adoption the title IV–E agency has some involvement; (3) a foster care summary data file in which the title IV–E agency indicates the total number of foster care records and the age distribution of children in those records; and, (4) an adoption summary data file in which the title IV–E agency indicates the total number of adoption records and the age distribution of the children adopted.

As in the 2008 NPRM, we propose to eliminate the existing foster care and adoption summary data files because they are no longer necessary. ACF originally intended to use the summary data files to verify the completeness of a title IV–E agencies' data submissions and to ensure that the data file was not corrupted during transmission. The summary data files also served as a quick count of the number of children in foster care and those being adopted. However, because the summary data files contain aggregate data, the number of children entering, discharged, adopted, served or in care on a specific day cannot be determined. Further, we are now able to use new technology that is better able to verify the completeness of a data submission without requiring the title IV–E agency to generate summary data files. Commenters to the 2008 NPRM were appreciative and supportive of the deletion of the summary data files.

Section 1355.42(b) Out-of-Home Care Data File

In paragraph (b), we provide instructions on how the title IV–E agency must report information required under the proposed section 1355.43 for each child in the out-of-home care reporting population, as defined in section 1355.41(a).

Specifically, in paragraph (b)(1), we propose that a title IV–E agency submit the most recent information for data elements in the General information and Child information sections of the out-of-home care data file (paragraphs

1355.43(a) and (b), respectively). We propose that the title IV–E agency report current, point-in-time data for these sections similar to the time frame for most existing AFCARS data elements. This information is largely demographic in nature, and tends to remain static over a six-month report period or even longer, and therefore we have no need for the title IV–E agency to report historical information for these data elements. For example, the child's date of birth does not change over the course of a report period. This proposal is unchanged from that included in the 2008 NPRM, and there were no comments specific to this proposal.

In paragraph (b)(2), we propose that a title IV–E agency submit the most recent and historical information for most data elements in the following sections of the out-of-home care data file Parent or legal guardian information, Removal information, Living arrangement and provider information, Permanency planning, General exit information and Exit to adoption and guardianship information (paragraphs 1355.43(c), (d), (e), (f), (g) and (h), respectively). This information is required unless the exception in paragraph (b)(3) applies. This means that for every data file submission, we seek information on the child's full range of experience while in out-of-home care under the title IV–E agency's placement and care responsibility as described through the reporting of these data elements. This will allow ACF to develop a comprehensive picture of a child's full range of experience with entries, living arrangements and permanency plans while in the title IV–E agency's placement and care responsibility, as well as exits from the out-of-home care population. This proposal, which is modified slightly from the 2008 NPRM to incorporate data collection on caseworker visits and transition plans, differs from how title IV–E agencies currently report foster care information under the existing AFCARS requirements; a title IV–E agency currently submits certain detailed information on the child's current foster care episode and current placement setting only as of the last day of the report period.

We propose that a title IV–E agency submit recent and historical information pertaining to termination of parental rights (TPR) petitions, TPRs, removals, permanency and transition plans, caseworker visits, living arrangements and exits from the out-of-home care reporting population every report period rather than requiring updates on children who were in out-of-home care previously or who remain in out-of-home care from one report period to the next. Part of our goal in developing this proposed regulation is to eliminate features of the existing AFCARS that result in data collection that lacks detailed information about each foster care episode a child experiences. We propose to ask title IV–E agencies for historical information, rather than to report only on changes in the child's living arrangements, permanency plans and entry into or exit from out-of-home care so that we have a way to verify that the child's experiences have, in fact, remained the same across several report periods. Without longitudinal data collection, we are unable to have a comprehensive picture of a child's placement history within each out-of-home care episode. We also believe that this approach is less burdensome on title IV–E agencies. Although sending a child's full history involves submitting more data to us than providing an update as children exit and re-enter out-of-home care and their living arrangements and permanency plans change, we believe that submitting a child's history is less complicated and therefore requires fewer agency resources than the alternative. In other words, sending a child's full history requires the title IV–E agency to submit all the information it has on these data elements, rather than figure out a way to pull out only the information that has changed each report period.

We believe there will be many benefits to obtaining this longitudinal data, including the elimination of the information gaps that exist in the current AFCARS data, which raise questions about the child's experiences and make the data more difficult to analyze, the capability to build upon ACF's ability to conduct sophisticated analyses on what happens to a child or groups of children in foster care and the ability to better inform the current CFSRs and other monitoring efforts, on outcome measures such as time in foster care, foster care re-entries and the stability of foster care placements. Commenters to the 2008 NPRM and the 2010 FR Notice were largely supportive of the shift in the data collection methodology to incorporate longitudinal reporting. Although some commenters expressed concerns about implementing a longitudinal methodology for AFCARS data with existing systems and increasingly limited resources, we believe that the potential to have improved data available for Federal monitoring efforts and other priorities provides a compelling reason for proposing these changes.

We decided to propose gathering comprehensive data on removals, permanency and transition plans and caseworker visits, living arrangements and exits after considering whether a more limited approach to developing longitudinal data would meet our needs for data analysis, as well as those of title IV–E agencies. As described in the 2008 NPRM, the limited option(s) we considered would require a title IV–E agency to submit detailed removal, permanency plan, living arrangement and exit information on the child's four most recent out-of-home care episodes and four most recent living arrangements only. This would have captured almost all foster care episodes without requiring title IV–E agencies to submit extensive histories on children. Similarly, limiting the number of living arrangements that title IV–E agencies would report in AFCARS data would minimize the burden of this approach.

Ultimately, we decided that this more narrow approach was not sufficient. One problem with a limited longitudinal database was that we would have no information on the children who present some of the more significant challenges to the child welfare system. Children who experience high numbers of multiple living arrangements or frequently enter and exit out-of-home care are some of the nation's most vulnerable children. Furthermore, these children often require title IV–E agencies to expend more of their resources to address their problems.

In paragraph (b)(3), we propose an exception to the requirement for title IV–E agencies to report complete historical and current information on all out-of-home care episodes for children in the reporting population. The exception applies to those children who had an out-of-home care episode, as defined in 45 CFR 1355.41(a), prior to the effective date of the forthcoming final rule. Specifically, the exception applies to: (1) Children who are in out-of-home care on the effective date of the final rule who also had a prior out-of-home care episode before this date; and (2) children who enter out-of-home care after the effective date of the final rule who had a prior out-of-home care episode before this date. For such children, we propose that the title IV–E agency report the child's Removal dates, Exit dates and Exit reasons (paragraphs 1355.43(d)(1), (g)(1) and (g)(3) respectively) for each out-of-home care episode that occurred before the effective date of the final rule. The exception does not apply to a child's out-of-home care episode that is open on or begins after the effective date of the final rule; for such children we propose that a title IV–E agency report

all information described in paragraphs (b)(1) and (b)(2) during that ongoing out-of-home care episode. For example, if the effective date of the final rule was June 1, 2011, the title IV–E agency must report complete information for a child who was either in the out-of-home care reporting population on that date or entered subsequently, but only data elements in paragraphs 1355.43(d)(1), (g)(1) and (g)(3) for each previous out-of-home care episode that the child had. As time passes after the final rule goes into effect, this provision will apply to a diminishing number of children who are in the out-of-home care reporting population. This exception is the same as that proposed in the 2008 NPRM, and the comments in response to this proposal were generally supportive.

We propose this exception to the general rule to report complete information to strike a balance between our desire for recent and historical information on all children in out-of-home care under the proposed new AFCARS data elements and the challenge that some agencies may face in gathering this information for a child's previous contacts with the child welfare system before these new rules go into effect. We chose to have a title IV–E agency report at least the child's prior removal and exit dates and exit reasons, because we believe these data elements are most critical to our ability to construct certain cohorts of children for analysis in outcome-based monitoring activities. Further, a title IV–E agency currently collects this information in the normal course of casework activities for children in foster care and reports some of this information in existing AFCARS data elements.

While our proposal is to mandate that title IV–E agencies provide three specific data elements for the prior out-of-home care episode(s) of a child who is in out-of-home care on the effective date of the final AFCARS rule, or enters out-of-home care after the effective date of the final rule, we expect the title IV–E agency to report as much information as possible for these prior out-of-home care episodes, and at least as much information as it reports currently under the existing AFCARS. We know that many title IV–E agencies currently collect comprehensive information that pertains to the proposed new data elements. Therefore, we believe that it is reasonable to expect that agencies may be able to provide us with some additional information on the new data elements regarding prior episodes in the absence of a mandate. A title IV–E agency that does not provide this additional information will not be penalized. A title IV–E agency that provides this information with errors also will not be penalized.

Section 1355.42(c) Adoption and Guardianship Assistance Data File

In paragraph (c), we propose that the title IV–E agency submit the most recent, point-in-time information for all data elements in the adoption and guardianship assistance data file that are applicable to the child during the report period. This information is needed only on the last day of the report period because while information may change over the course of years, many of the data elements in this data file are not likely to change during any given report period. For example, the amount of title IV–E adoption or guardianship assistance may remain static for the duration of the title IV–E assistance agreement or the amount may fluctuate over a number of years, depending on changes in foster care maintenance rates, whether the adoptive parent(s) or legal guardian(s) request a change in the amount of the title IV–E adoption or guardianship assistance amount, or changes in the child's circumstances. Regardless, capturing this information during each report period will allow ACF to better track and analyze the nature of title IV–E adoption and guardianship arrangements and assistance agreements and to make budget projections. This proposal was first introduced in the 2008 NPRM and received no substantive comments.

Section 1355.42(d) Reporting Missing Information

In paragraph (d), we propose how the title IV–E agency must report missing information. If the title IV–E agency fails to collect the information for a data element, the agency must report the data element as blank or missing. The title IV–E agency may not write the extraction code to default to a valid response option if caseworkers did not collect or enter those responses into the information system. This is the case even when there may be a response option for a data element that allows the title IV–E agency to indicate that the information is not yet determined or is unknown. This provision is consistent with ACF's longstanding practice; however, title IV–E agencies have pointed out that there is no official guidance on this issue. Therefore, we wish to state unequivocally that this practice of defaulting is not permitted.

This proposal was first introduced in the 2008 NPRM. Several commenters to the 2008 NPRM indicated that they felt it was not realistic to forbid a title IV–E agency to default or map information that caseworkers did not collect or enter into the information system to a valid response option, and that this proposal would increase caseworker burden. Commenters suggested that this proposal would require the caseworker to not only document the work they completed in a child's case, but also enter data into the case management system to indicate ''not yet determined'' in order to meet the AFCARS requirement for missing data. Although we considered these comments, the statutory mandate in section 479(c)(2) of the Act requires ACF to assure that any AFCARS data that is collected must be reliable and consistent over time. Permitting the practice of defaulting decreases the reliability of the AFCARS data collected in that data reported may not truly reflect the case-specific information and circumstances for each child in the reporting population. For these reasons, we again propose to prohibit the practice of a title IV–E agency having an information system default to or generate automatic responses.

Section 1355.42(e) Electronic Submission

In paragraph (e), we propose to continue requiring a title IV–E agency to submit its data files to ACF electronically, consistent with ACF's specifications. We currently provide guidance on submission of technical requirements and specifications through official ACF policy and technical bulletins. This proposal is the same as that included in the 2008 NPRM, and we received several comments in response to the 2008 NPRM requesting that ACF provide clarification on the type of technologies it anticipates the title IV–E agencies will use in the report submission process. We considered these comments, but learned through our experience with the existing AFCARS that it is prudent not to regulate the technical specifications for transmitting data. As technology changes, we must keep pace with the most current, practical and efficient transmission methods that will meet title IV–E agency and Federal needs. As such, we will continue to provide guidance through policy and technical bulletins.

Section 1355.42(f) Record Retention

In paragraph (f), we propose that title IV–E agencies retain records necessary to comply with the AFCARS reporting requirements outlined in proposed sections 1355.42 through 1355.44. In particular, we propose that the title IV–E agency's retention of AFCARS records is not limited to the

Departmental record retention rules in 45 CFR 92.42(b) and (c). These Departmental record retention rules require title IV–E agencies to retain financial and programmatic records, supporting documents and statistical records related to Federal programs and requirements for a period of three years. Because we seek comprehensive data on children in out-of-home care, including information on their prior experiences with the child welfare system, we view the three-year retention period to serve as a minimum.

Practically, this means the title IV–E agency must keep applicable records until the child is no longer of an age to be in the reporting populations. Additionally, this means that the title IV–E agency must keep applicable records for a minimum of three years when a child exits the reporting population due to age. This is because we propose that a title IV–E agency keep a child's identification number consistent over time and indicates the child's entire history with the child welfare system. This proposal is the same as in the 2008 NPRM. We received several comments in response to this proposal in the 2008 NPRM that indicated concerns regarding the cost of retaining both electronic and paper records. We considered these comments; however, since a child's information is likely to be contained in an electronic format through the IV–E agency's automated information system and is relatively simple to archive and store, we believe the proposed record retention rules are reasonable. Also, based on our experience through SACWIS and AFCARS reviews, title IV–E agencies currently maintain the child's information in their systems until a child reaches the age of majority.

Section 1355.43 Out-of-Home Care Data File Elements

Section 1355.43(a) General Information

In paragraph (a), we propose that title IV–E agencies collect and report general information that identifies the reporting title IV–E agency as well as the child in out-of-home care.

Title IV–E agency. In paragraph (a)(1), we propose that the title IV–E agency indicate the name of the title IV–E agency responsible for submitting AFCARS data to ACF. A State title IV–E agency must indicate its State name for identification purposes. ACF will work with Tribal title IV–E agencies to provide further guidance, including a list of valid response options, during implementation. This proposal differs from the existing AFCARS regulation, which requires the title IV–E agency to identify itself using the U.S. Postal Service two letter abbreviation for the State or the ACF-provided abbreviation for the title IV–E Tribal agency responsible for submitting the AFCARS data to ACF. This proposal also is different from the 2008 NPRM in which we proposed to use Federal Information Processing Standard (FIPS) codes for State identification. We did not receive comments on this data element in response to the 2008 NPRM but have opted not to proceed with the NPRM proposal to remove FIPS codes, which are no longer being updated and maintained.

Report date. In paragraph (a)(2), we propose that a title IV–E agency indicate the report period date. Specifically, a title IV–E agency will report to us the last month and year that corresponds with the end of the report period, which will always be either March or September of any given year. The information we propose to collect is the same as in the existing AFCARS regulations, and was proposed in the 2008 NPRM. We received no comments on this data element in response to the 2008 NPRM.

Local agency. In paragraph (a)(3), we propose that the title IV–E agency report to us the name of the local county, jurisdiction or equivalent unit that has responsibility for the child. This proposal differs from current AFCARS regulations, which instruct the title IV–E agency to identify the local agency using the five digit FIPS code of the county or ACF-provided abbreviation for the Indian Tribe local unit, and the 2008 NPRM which proposed that the title IV–E agency indicate the FIPS code for the local agency. We received several comments in response to the 2008 NPRM that indicated concern about continuing to use FIPS codes for jurisdictions below the State level. We agree with these comments, and since FIPS codes are no longer being updated and maintained, we propose revisions to this data element to remove FIPS codes. ACF will work with Tribal title IV–E agencies to provide further guidance, including a list of valid response options, for this element during implementation.

Child record number. In paragraph (a)(4), we propose that the title IV–E agency report the child's record number, which is a unique person identification number, as an encrypted number. The child record number must remain the same for the child no matter where the child lives while in the placement and care responsibility of the title IV–E agency and across all report periods and out-of-home care episodes. As discussed in section 1355.44, we also propose to require the title IV–E agency to use this child record number for reporting if the child exits the out-of-home care data file and enters the reporting population for the adoption and guardianship assistance data file. The title IV–E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The title IV–E agency's encryption methodology must meet all ACF standards prescribed through technical bulletins or policy.

The existing AFCARS requirement is for the title IV–E agency to report the sequential or unique number that follows the child as long as he or she is in foster care. We now propose, as we did in the 2008 NPRM, to revise the child record number data element to no longer allow agencies to use sequential numbers for AFCARS. Rather, title IV–E agencies are to use encryption and consistent numbers. The proposed changes to this data element are based on findings from AFCARS reviews, technical assistance, and public comments, described at length in the 2008 NPRM, which indicate that there are circumstances in which title IV–E agencies use different record numbers for the same child. We received a number of comments in response to the 2008 NPRM applauding the inclusion of this data element that meets a long standing need for data about a child's total experience in out-of-home care, as well as several comments seeking clarification and technical assistance around this data element. Through these proposed revisions, title IV–E agencies will keep a child's record number consistent through his or her out-of-home care experience, and utilize encryption to ensure that the child's identity will remain confidential. Ensuring that the child record number is consistent throughout placement changes also will assist in the analysis of NYTD data, which requires States to use a child's AFCARS child record number for identification.

This proposed data element, however, is different from the 2008 NPRM proposal in that we do not propose to retain the exception that a title IV–E agency may provide a new child record number if the child was previously adopted. Initially proposed in the 2008 NPRM, this exception applied to a child who re-enters out-of-home care following an adoption. In addition to the public comments received in response to the 2008 NPRM that support maintaining a consistent identification number throughout a child's out-of-home care experience, we are not retaining this exception so that we may collect information on the experience of

sibling groups in the child welfare system through out-of-home care placements. By ensuring that title IV–E agencies use consistent child record numbers, it may be possible to capture information over time on the total experience of sibling groups in the child welfare system.

Finally, we would like to note that we are not continuing our 2008 NPRM proposal to require title IV–E agencies to report a unique and encrypted Family Record Number that is associated with the child. We acknowledge that defining ''family'' for the purposes of this data element may be challenging for title IV–E agencies and understand from commenters to the 2008 NPRM that associating a family record number with each child may be technically difficult for State and Tribal agency systems. We instead propose to collect information in both paragraph (e) and proposed section 1355.44 to aid in the identification of sibling groups, and we discuss these proposals later in this NPRM.

Section 1355.43(b) Child Information

In paragraph (b), we propose that title IV–E agencies collect and report various characteristics of the child in the out-of-home care reporting population.

Child's Birth Information. In paragraph (b)(1), we propose to collect information on the child's date of birth and whether the child was born in the United States.

In paragraph (b)(1)(i), we propose to require title IV–E agencies to report the month, day and year of the child's birth, which is what we proposed in the 2008 NPRM. This proposal differs slightly from the instruction included in existing AFCARS regulations regarding a child's date of birth in that we do not require the title IV–E agency to report an abandoned child's date of birth as the 15th of the month. As detailed in the 2008 NPRM, we are not retaining this requirement because AFCARS reviews revealed that many title IV–E agencies were not aware of this instruction or that workers were reluctant to enter an unknown birth date as the 15th of the month. Therefore, we are requiring that the title IV–E agency always provide the child's actual or estimated date of birth. There were no substantive comments on this data element in response to the 2008 NPRM.

In paragraph (b)(1)(ii), we propose to require the title IV–E agency to report whether or not the child was born in the United States. If the child was born in the United States, indicate ''yes.'' If the child was born in a country other than the United States, indicate ''no.'' This is a newly proposed data element and will give us a national picture of how many foreign-born children are in out-of-home care. We specifically request comments from State and Tribal title IV–E agencies on this data element.

Child's sex. In paragraph (b)(2), we propose that the title IV–E agency report whether the child's is male or female, as appropriate. This proposal mirrors both the 2008 NPRM proposal and the existing regulation. There were no substantive comments in response to this proposed data element in response to the 2008 NPRM.

Child's race. In paragraph (b)(3), we propose to require the title IV–E agency to report information on the race of the child. Each racial category is a separate data element to represent the fact that the OMB standards require title IV–E agencies to allow an individual to identify with more than one race. Consistent with the OMB standards, self-reporting or self-identification is the preferred method for collecting data on race and ethnicity. This means that the title IV–E agency is to allow the child, if age appropriate, or the child's parent(s) or legal guardian(s) to determine the child's race.

The response options proposed are slightly different from those in the existing AFCARS, but are similar to the 2008 NPRM proposal and to those in the NYTD (see 45 CFR 1356.80). One difference in the current proposal is that we allow, in addition to the child and the child's parent(s), legal guardians to determine the child's race. We are including this option to acknowledge that a legal guardian, rather than the child's parent(s), may be the appropriate person to determine the child's race, if that child has been living with him or her. The racial categories of American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander and White listed in proposed paragraphs (b)(3)(i) through (b)(3)(v) are consistent with the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, as described in the 2008 NPRM. There were several public commenters in response to both the 2008 NPRM and 2010 FR Notice that suggested aligning response options regarding a child's race with other Federal data reporting efforts such as NCANDS or NYTD race categories. We agree, and the racial categories proposed both in the 2008 NPRM and the current proposal are aligned with those in NCANDS and NYTD, in addition to being consistent with OMB race and ethnicity standards as described above.

In the 2008 NPRM, we propose that if the child's race is ''unknown,'' the title IV–E agency is to so indicate in paragraph (b)(3)(vi). However, we now propose to clarify that ''unknown'' must also be selected if the child or his or her parent(s) or legal guardian(s) cannot communicate the child's race. This response option serves to replace ''unable to determine'' currently included in AFCARS. A child's race can be categorized as ''unknown'' only if a child or his or her parent(s) or legal guardian(s) does not actually know the child's race, or the child or his or her parent(s) or legal guardian(s) is unable to communicate the child's race. Using ''unknown'' to report the fact that the title IV–E agency has not asked the child or his or her parent(s) or legal guardian(s) for the child's race is not an acceptable use of this response option. Further, it is acceptable for the child to identify that he or she is multi-racial, but does not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that a race is unknown.

In the 2008 NPRM we proposed to introduce two new response options, currently not in AFCARS, that we include in our proposal. We propose that if the child's race cannot be determined because the child is ''abandoned,'' the title IV–E agency must so indicate in paragraph (b)(3)(vii). We provide a definition of abandoned so that we are clear that the term should be used in very restrictive circumstances and not any time a parent may be temporarily unavailable. If a child who was abandoned as an infant later identifies as being of a certain race or multiple races, the title IV–E agency must indicate the applicable race(s), rather than ''abandoned.'' Finally, we propose that in the situation in which the child or his or her parent(s) or legal guardian(s) ''declines'' to identify any race, the title IV–E agency must so indicate in paragraph (b)(3)(viii).

Child's Hispanic or Latino ethnicity. In paragraph (b)(4), we propose to require that a title IV–E agency report the Hispanic or Latino ethnicity of the child. This proposed data element is similar to that proposed in the 2008 NPRM. The only difference in the current proposal is that, in addition to the child or the child's parent(s), we allow the legal guardian(s) to determine the child's ethnicity. We include this option to acknowledge that a legal guardian, rather than the child's parent(s), may be the appropriate person to determine the child's ethnicity, if that child has been living with him or her. This proposal differs from the existing AFCARS in that we propose here that the child's ethnicity be self-determined by the child, or determined by his or her

parent(s) or legal guardian(s), consistent with OMB race and ethnicity standards. As in the 2008 NPRM proposal, we also propose that the title IV–E agency may report the following response options, not currently included in AFCARS whether the child's ethnicity is ''unknown'' because the child or the child's parent(s) or legal guardian(s) does not know or cannot communicate the information, whether the child is ''abandoned'' or the child or the child's parent(s) or legal guardian(s) ''declined'' to provide this information.

In paragraphs (b)(5) and (b)(6), we propose for the first time that the title IV–E agency collect information on health assessment(s) that the child has received while in foster care. We specifically seek information on the date of the child's most recent health assessment and whether the child has been receiving health assessments in a timely manner to ensure that the title IV–E agency is performing health assessments on each child in a foster care placement in accordance with their own established schedule, per the statutory requirements in section 422(b)(15)(A) of the Act. In paragraph (b)(6), if the child has missed a required health assessment in the past but has now received all required health assessments, the title IV–E agency must indicate ''yes.'' We have learned through technical assistance that many title IV–E agencies are already collecting information regarding the receipt of health assessments for each child in foster care, including the dates of each assessment, and therefore, the inclusion of this proposal should not place significant burden on the title IV–E agency.

ACF believes that it is important to ensure that the title IV–E agency is identifying and addressing the health needs of children in foster care. Proposing to require the title IV–E agency to report health assessment information provides ACF an opportunity to ensure that the title IV–E agency is identifying a child's critical health needs through routine health assessments and that these needs are appropriately addressed and reviewed by a medical professional. For example, if a child is receiving health assessments according to the schedule established by the title IV–E agency per section 422(b)(15)(A) of the Act, we can assume that the medical professional(s) performing the screening will identify and address health needs such as immunization updates, need for services, and appropriate use of medications. We believe that this information will serve as a proxy for other indicators of well-being in addition to providing health assessment information for each child in the out-of-home care reporting population. We welcome comments on this proposal.

Health, behavioral or mental health conditions. In paragraph (b)(7), we propose to require title IV–E agencies to report whether a child has been diagnosed by a qualified professional as having one or more health, behavioral or mental health conditions prior to or during the child's current out-of-home care episode as of the last day of the report period. In the existing AFCARS the title IV–E agency is required to collect similar information on a child's conditions in the data element ''child disability.'' In the 2008 NPRM we proposed to revise the data element name and require title IV–E agencies to collect information on an expanded list of health, behavioral or mental health conditions. Our current proposal utilizes the expanded list of condition types as proposed by the 2008 NPRM, but is modified as detailed below.

If a title IV–E agency indicates that the child has a diagnosed condition, we now propose to require the title IV–E agency to indicate ''existing condition,'' ''previous condition'' or ''does not apply,'' as applicable for each of the categories of conditions in paragraphs 1355.43(b)(7)(i) through (b)(7)(xii). A title IV–E agency must report a diagnosed condition known prior to or during the child's current out-of-home care episode as of the last day of the report period. If the child was diagnosed with a condition prior to entry, and that condition is still applicable to the child when he or she enters foster care, the title IV–E agency must indicate this as an ''existing condition.'' If the title IV–E agency is aware and obtained a medical summary, then this information should be recorded and reported in AFCARS data as an ''existing condition.'' Consequently, if a child was diagnosed for a condition that is resolved, the title IV–E agency must report this diagnosis as a ''previous condition.'' For instance, a child may have been born with a congenital defect that fits in the physically disabled category and has undergone treatment for the condition such that the condition no longer impairs the child's day-to-day motor functioning.

This proposal differs from the 2008 NPRM proposal and existing AFCARS regulations. In the 2008 NPRM we proposed to require a title IV–E agency to indicate ''applies'' or ''does not apply'' for each response option. We propose now to require a title IV–E agency to indicate ''previous condition'' versus ''existing condition'' specifically to collect ongoing information on conditions that the child was previously diagnosed with, but do not currently apply to the child. We were unable to distinguish between current and prior diagnoses with our 2008 NPRM proposal. In addition, we were unable to capture comprehensive information in current AFCARS regulations and our 2008 NPRM proposal regarding a child's diagnosed health, behavioral and mental health conditions beyond the current AFCARS report period, which this proposal will allow. Collecting additional information regarding conditions for which the child was previously diagnosed but do not exist as current diagnoses will provide increased opportunities for analysis regarding the health and service needs of children in out-of-home care. While this information will be updated in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting the health-related data elements such that the information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission for each set of health-related data elements). We also seek comment on whether there are further steps that should be taken in this area to provide usable, accurate, and reliable longitudinal information about a child's health conditions.

We proposed to modify the list of conditions in current AFCARS regulations in the 2008 NPRM that title IV–E agencies currently report, creating separate response options for visually and hearing impaired (combined in current regulation) and adding the following diagnosed conditions as response options anxiety disorder, childhood disorders, learning disability, substance use-related disorder and developmental disability. We propose to make a minor change to the list by renaming ''mental retardation'' as ''intellectual disability,'' but we intend to maintain the definition of ''mental retardation'' that was included in the 2008 NPRM. Our reasoning for making this name change is to conform with the proposed changes to the Diagnostic and Statistical Manual of Mental Disorders-V (DSM–V), the changes made by Public Law 111–256 that solidified the use of ''intellectual disability'' in Federal law and the increasing focus on cultural sensitivity to the term ''mental

retardation.'' In response to the requirements in Public Law 113–183 to include information in the annual Child Welfare Outcomes Report on children in foster care who are pregnant, we propose the addition of ''pregnant'' to the list of conditions. This information is required to be included in the annual report beginning in FY 2016. Other than the changes described above, we have chosen to continue the definitions for the proposed conditions without additional changes both to maintain consistency with currently reported conditions, and to limit burden placed on title IV–E agencies associated with making changes to this data element. We welcome comments on this proposal.

In response to the 2008 NPRM, several commenters expressed concern regarding the additional training that caseworkers would require to capture and categorize detailed clinical information, as well as concerns regarding the impact of the new data elements on the SACWIS system and programmatic data elements. However, as we described in the 2008 NPRM, we believe that collecting information pertaining to the health characteristics of a child is important in understanding the length of time children remain in care, their placement needs, number of placements, and, in general, the needs of children being served by the title IV–E agency. In addition, requiring this information is consistent with the provision in section 475(1)(C) of the Act for the title IV–E agency to have a case plan that includes the child's health records and known medical problems. We have observed, through our AFCARS reviews and Technical Assistance provision, that many title IV–E agencies already collect comprehensive information from medical and health assessments for children in foster care, and this information is often incorporated as part of a child's case record.

Finally, consistent with existing AFCARS and detailed in the 2008 NPRM, we propose to continue requiring that the title IV–E agency indicate diagnoses made by a qualified professional as determined by applicable laws and policies of the State or Tribal service area. A qualified professional may include a doctor, psychiatrist or, if applicable in the State or Tribal service area, a licensed clinical psychologist or social worker.

School enrollment. In paragraph (b)(8), we propose for the first time that the title IV–E agency report whether a child is currently a full-time student at and enrolled (or in the process of enrolling) in school as of the last day of the report period or on the day of exit for a child exiting out of home care prior to the end of a report period. We propose that the title IV–E agency report the child's school enrollment by indicating ''elementary,'' ''secondary,'' ''post-secondary education or training'' or ''college.'' We propose that a child who has not reached the age for compulsory school attendance must be identified as ''not school-age'' and a child who has reached the age for compulsory school attendance, but is not enrolled or in the process of enrolling in any school setting full-time must be identified as ''not enrolled.''

For the purposes of AFCARS, we propose that for a child to be ''enrolled'' in school he or she must meet the statutory definition of ''elementary or secondary school student'' at section 471(a)(30) of the Act or participate full-time in college or post-secondary education/training activities. An ''elementary or secondary school student'' per section 471(a)(30) of the Act means that the child is (A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located; (B) instructed in an elementary or secondary education program in accordance with a home school law of the State or other jurisdiction in which the home is located; (C) in an independent study elementary or secondary education program, in accordance with the law of the State or other jurisdiction in which the program is located, that is administered by the local school or school district; or (D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.

We propose that, for the purposes of AFCARS, enrollment in ''post-secondary education or training'' refers to full-time enrollment in any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Enrollment in ''college'' refers to a child that is enrolled full-time at a college or university.

We propose that the title IV–E agency collect and report information on the child's school enrollment for the first time in an effort to learn more about the well-being and stability of children served by title IV–E agencies. ACF agrees with commenters in response to the 2010 FR Notice in the importance of addressing the educational needs of youth in foster care. In addition, some title IV–E agencies already collect information on school enrollment, and consider this information to determine placements for a child entering foster care or to change foster care placements. We propose to collect information in AFCARS on school enrollment in particular to respond to this interest, and to address the new requirement in section 471(a)(30) of the Act (amended by Pub. L. 110–351) that title IV–E agencies must assure in their title IV–E plan that each child receiving a title IV–E payment who has attained the age for compulsory school attendance is a full-time elementary or secondary student, as defined above, or has completed secondary school as described in ACYF–CB–PI–10–11. This statutory requirement is designed to ensure that a child of appropriate age is enrolled full-time or is in the process of enrolling in an elementary or secondary school, if the child has not already completed secondary school.

Further, we propose to collect information on a child's enrollment in college and/or post-secondary education/training for all children in the out-of-home care reporting population, which includes children receiving extended title IV–E assistance beyond age 18. Some commenters to the 2010 FR Notice were resistant to us requiring title IV–E agencies to report additional education data elements; however, the majority of commenters indicated interest in the collection of data in AFCARS that directly addresses a child's educational experience, given the increasing emphasis on education in foster care. The data elements in paragraphs (b)(8) through (b)(12) of this section are proposed, in part, to address this identified need for information, as well as to collect information on children receiving extended title IV–E assistance per the option provided in section 475(8)(B) of the Act. We welcome comments on this proposal.

Educational level. In paragraph (b)(9), we propose for the first time that a title IV–E agency report the highest educational level, from Kindergarten to college or postsecondary education/training, completed by the child as of the last day of the report period. If a child has not yet reached the minimum age for compulsory school attendance, as determined by applicable State/Tribal law, the title IV–E agency must indicate that the child is ''not school-age.'' Title IV–E agencies are not currently required to report this information in AFCARS and this proposal replaces the *Educational performance* data element we proposed in the 2008 NPRM to require a title IV–E agency to report information on whether the child has

repeated a grade in school and the number of times a child has repeated a grade. Comments in response to the 2008 NPRM questioned the value of collecting information on whether a child has repeated grades in school. Commenters to the 2008 NPRM also suggested that reporting data on repeated grades was not useful, as this information provided an incomplete picture of a child's educational progress. We agree a revision is needed, given the passage of Public Law 110–351, and instead propose that a title IV–E agency collect information on a child's recently completed grade level, which measures educational progress and aligns with statutory changes made by Public Law 110–351.

Title IV–E agencies must report the highest educational level that the child has completed as of the last day of the report period, rather than the child's current educational level. For example, the title IV–E agency should indicate ''Kindergarten'' if the child has completed Kindergarten or is currently in or about to begin 1st grade. The title IV–E agency must indicate ''college'' if the child has completed at least one semester of study at a college or university, and indicate ''post-secondary education or training'' if the child has completed any amount of time in post-secondary education or training (*e.g.,* vocational or job skills training) other than an education pursued at a college or university.

We seek this information in an effort to learn more about a child's well-being while in out-of-home care. We believe that collecting the highest educational level completed from Kindergarten to college or post-secondary education/training is an appropriate indicator of educational achievement because it is a measure that does not vary greatly among jurisdictions, and is appropriate for all school-age children. The highest level of education completed is relatively simple for a title IV–E agency to collect and report, and there is evidence from AFCARS reviews and technical assistance that at least a few title IV–E agencies already collect this information. Further, we believe that this data element is consistent with the statutory requirement for title IV–E agencies to compile information on health and education records of the child, including information on the child's grade level performance while in foster care (section 475(1)(C)(ii) of the Act) and we believe that it would be beneficial to collect this information in AFCARS so that we can analyze trends in the relationship between a child's age and his or her educational achievement. While this information will be updated in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting data on a child's education level such that the information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission associated with each grade level). We also seek comment on whether there are further steps that should be taken in this area to provide useable, accurate, and reliable longitudinal information about a child's educational level.

Educational stability. In paragraph (b)(10), we propose for the first time to require title IV–E agencies to collect and report whether the child is enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement into foster care or a placement change that occurred within the report period if applicable. This information is not longitudinal and will be captured each report period. As described in paragraph (b)(8), for the purposes of AFCARS, a child is considered to be ''enrolled'' in an elementary or secondary school if the child meets the statutory definition of ''elementary or secondary school student'' at section 471(a)(30) of the Act.

New school enrollments, for the purposes of AFCARS, are indicated by any school change that occurs prompted by a child's initial placement after entering foster care or any subsequent living arrangement change, whether or not the child was ever previously enrolled in the ''new'' school. If there is a new enrollment in an elementary or secondary school for the child, we propose to require the title IV–E agency to provide additional information on the reason that prompted this new enrollment in paragraphs (b)(10)(i) through (b)(10)(vii), by indicating whether each condition ''applies'' or ''does not apply.'' In paragraph (b)(10)(i), we propose that the title IV–E agency indicate ''proximity'' if the child enrolled in a new elementary or secondary school because the distance to his or her former school was too far from the child's out-of-home care placement, there was a lack of transportation to the child's former school or proximity was otherwise a factor in the decision for the child to change schools. In paragraph (b)(10)(ii), we propose that the title IV–E agency indicate ''district/zoning rules'' when the child enrolled in a new school because State/Tribal or local policies, laws or regulations prohibit the child from attending his or her former school as a result of an initial placement into foster care or a subsequent change in living arrangements. In paragraph (b)(10)(iii), we propose that the title IV–E agency indicate ''residential facility'' when the child enrolled in a new school because he or she formerly attended school on the campus of a residential facility. Facilities of this type could include residential treatment centers, as well as child care institutions. In paragraph (b)(10)(iv), we propose that the title IV–E agency indicate ''services/programs'' when the child enrolled in a new school to participate in services or programs that are not offered at his or her former school. These services could include, but are not limited to, specialized academic support programs, behavior modification programs, residential education programs or other supportive services that would benefit the well-being of the child. In paragraph (b)(10)(v), we propose that the title IV–E agency indicate ''child request'' if the child enrolled in a new school because he or she requested to leave the previous school. In paragraph (b)(10)(vi), we propose that the title IV–E agency indicate ''parent/legal guardian request'' if the child enrolled in a new school because his or her parent(s) or legal guardian(s) requested for the child to leave the previous school. Finally, in paragraph (b)(10)(vii), we propose that the title IV–E agency indicate ''other'' if the child enrolled in a new elementary or secondary school due to a reason that was not included in paragraphs (b)(10)(i) through (b)(10)(vi).

We seek this information because we are interested in gathering information on the reasons that prompt a change in school enrollment for children upon an initial placement into foster care or as the result of a subsequent change in living arrangements. In addition, we propose the collection of information regarding educational stability to conform to changes introduced in Public Law 110–351 that added a case plan requirement to ensure the development of a plan for the educational stability of a child in foster care as established in section 475(1)(G) of the Act.

Although some commenters to the 2010 FR Notice indicated that collecting this data would increase the burden for caseworkers who have trouble obtaining this information, many commenters to the 2008 NPRM and 2010 FR Notice supported the collection of this

information in AFCARS. In addition, we have learned through AFCARS reviews and technical assistance that some title IV–E agencies already collect this information and utilize it when considering placements for children entering foster care. We considered the comments concerned about the increased burden, however, we believe that collecting information on the reasons title IV–E agencies determine that remaining in the school of origin or a previous school is not in the child's best interest will help to identify and address barriers to educational stability after an initial placement into foster care or a change in living arrangements.

While this information will be updated in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting information on educational stability such that information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission for each change in school enrollment). We also seek comment on whether there are further steps that should be taken in this area to provide usable, accurate, and reliable longitudinal information about a child's educational stability.

Special education. In paragraph (b)(11), we propose to require the title IV–E agency to collect information about whether the child has an Individualized Education Program (IEP) or an Individualized Family Service Program (IFSP) as of the end of the report period. An IEP is a written statement for each child with a qualifying disability that requires special education services for that disability. The IEP is developed, reviewed and revised by the school in accordance with requirements in section 614(d)(1) of Title I, Part B of the Individuals with Disabilities Education Act (IDEA) and implementing regulations. An IFSP is a written individualized family service program for a child ages 0–3 with special needs. An IFSP must be developed by a multidisciplinary team, including the parent(s) and early intervention specialist(s), and meet requirements of section 636 of Title I, Part C of the IDEA and implementing regulations.

If the child does not have an IEP or IFSP, the title IV–E agency must indicate ''not applicable.'' We believe that a current IEP or IFSP indicates that a child has need for or is currently receiving special education instruction or early intervention services, respectively. Agencies are not required to report this information in the current AFCARS. This proposal modifies the ''special education'' data element proposed in the 2008 NPRM, in which we proposed to require title IV–E agencies to indicate whether the child received special education instruction during the report period. The term ''special education'' is defined in 20 U.S.C. 1401(29) and means specifically designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability.

Several commenters to both the 2008 NPRM and the 2010 FR Notice suggested collecting information specifically on whether a child has a current IEP or IFSP, rather than general receipt of special education. Other commenters to the 2008 NPRM indicated that there were significant potential data quality issues with reporting on the child's receipt of special education, as this information would require constant updating by caseworkers in title IV–E agencies. Commenters to the 2008 NPRM also were concerned that the needs of and services received by young children in foster care (ages 0–3) were excluded from the 2008 NPRM proposal. Our current proposal is responsive to some of these comments. Further, we propose collecting information on a child's IEP or IFSP as a proxy for receipt of special education because we believe that data on whether the child has an IEP or IFSP is a more reliable measure of determining if a child is receiving special education services. In addition, we believe that information regarding an IEP or IFSP is information often included in a child's case file and is thus easier for a title IV–E agency to obtain than information regarding eligibility for special education instruction.

As outlined in the 2008 NPRM, we propose to collect information on a child's receipt of special education because of our interest in monitoring the well-being of children in out-of-home care and our desire to provide a more comprehensive picture of the educational needs of children in out-of-home care. Further, gathering this information is consistent with the case plan requirements in section 475(1)(C) of the Act. We welcome comments on this proposal.

IDEA qualifying disability. In paragraph (b)(12), we propose for the first time to require title IV–E agencies to report the child's qualifying disability, if applicable, (*i.e.,* categories of impairment indicated on the child's IEP or IFSP) if the title IV–E agency indicated that the child has either an IEP or IFSP in paragraph (b)(11); otherwise the title IV–E agency should leave this data element blank. The child has a ''qualifying disability'' if the child meets at least one category of impairment (as defined in the IDEA at 34 CFR 300.8(c)), and the child may need early intervention, special education and/or related services in order for the child to benefit from an educational program. The categories of impairment defined in IDEA (including developmental delay, autism, hearing or visual impairment, emotional disturbance, intellectual disability and traumatic brain injury) are included on the child's IEP or IFSP as part of the eligibility determination for special education services. The response options we propose are the same as the categories of impairment defined at 34 CFR 300.8(c).

The information we propose to be collected in this paragraph differs from the information collected in ''health, behavioral or mental health conditions'' as described in paragraph (b)(7). In paragraph (b)(12), we propose to require the title IV–E agency to indicate which categories of impairment serve as the basis for the child's qualification for early intervention services or special education instruction, which is information taken directly from the child's IEP or IFSP. The response options described in paragraphs (b)(12)(i) through (b)(12)(xii) are unique in that they are federally-defined under IDEA and may not always match the clinical definition(s) of a disability. Further, IDEA does not require conditions present on an IEP or IFSP to be diagnosed by a qualified professional; conditions may be determined through an assessment or other mechanism by various school personnel. In contrast, paragraph (b)(7) describes health, behavioral and mental health conditions that are aligned with clinical definitions and instructs title IV–E agencies to indicate only those conditions that have been diagnosed by a qualified professional (as defined by the title IV–E agency) for the purposes of AFCARS data collection.

We believe that collecting information pertaining to the needs of children receiving special education services is important to understanding the educational performance of children in out-of-home-care. Our proposal to collect information in paragraph (b)(12) on the categories of impairment defined in IDEA also is consistent with the suggestions of several public commenters to the 2008 NPRM who

believed that the previously proposed ''special education'' data element did not provide enough information on the child's need for special education, particularly on children who are receiving special education services but do not have a clinical disability diagnosed by a qualified professional indicated in paragraph (b)(7) (*e.g.,* children with Attention Deficit Disorder or other behavioral conditions). Further, requiring this information is consistent with the case plan requirements in section 475(1)(c) of the Act. We welcome comments on this proposal.

Prior adoption. In paragraph (b)(13), we propose to require a title IV–E agency to report whether the child has experienced one or more prior legal adoption(s), and the dates, types, and jurisdiction of each adoption. In the existing AFCARS, we require title IV–E agencies to indicate if the child was ever adopted and, if so, the child's age at the time of the adoption finalization. In the 2008 NPRM, we proposed to revise the requirement to clarify that we are interested in whether the child has ever experienced a finalized adoption prior to the current out-of-home care episode, and proposed to require the title IV–E agency to collect the date, type, and location of the prior adoption, if one is so indicated. Our current proposal mirrors the 2008 NPRM proposal to require the title IV–E agency to collect information on whether a child had or had not experienced a prior adoption or report if information is unknown because the child has been abandoned. However, for the first time, we propose that title IV–E agencies submit adoption date, type, and jurisdiction information for each prior adoption that the child had experienced, providing an opportunity for data collection if the child has experienced one or more adoption(s) prior to entry into foster care.

As in the 2008 NPRM, we also clarify that the title IV–E agency is to include any type of prior adoption in this data element, regardless of whether the adoption was public, private or independent, or out of the United States. Although some commenters to the 2008 NPRM had concerns about the increased burden on caseworkers to collect this information, many commenters to both the 2008 NPRM and 2010 FR Notice supported the collection of this information, indicating that it provided greater detail on the stability of adoptions from foster care.

Prior adoption date(s). In paragraph (b)(13)(i), we propose to require a title IV–E agency to report the finalization date of each prior adoption(s) that the child has experienced if it was indicated in paragraph (b)(13) that the child had at least one prior finalized adoption. This is a modification of the data element proposed in the 2008 NPRM, which did not provide the opportunity to report multiple adoption finalization date(s).

In the existing AFCARS, we require the title IV–E agency to report the child's age range at the time of the prior finalized adoption. This information, however, was insufficient to determine accurately when the child was previously adopted. Thus, as in the 2008 NPRM, we propose that the title IV–E agency report the actual finalization date to allow us to determine how much time has elapsed between the child's previous adoption(s) and his or her current out-of-home care episode. We did not receive comments on this proposal in the 2008 NPRM.

In the case of an intercountry adoption, the child's parent(s) may have gone through a readoption process in the jurisdiction where they reside in the United States. While in many cases this process is optional for a child whose adoption was finalized in the originating country, we understand that there are some jurisdictions in the United States that require the child to be readopted in his or her jurisdiction of residence. In such cases, we are requiring that the title IV–E agency provide the date that the adoption is considered final in accordance with applicable State or Tribal laws.

Prior adoption type(s). In paragraph (b)(13)(ii), we seek information on the type of each prior adoption the child has experienced, as indicated in (b)(13)(i). We propose to require a title IV–E agency to indicate ''foster care adoption within State or Tribal service area'' if the child was in foster care in the reporting State or Tribal service area at the time the prior adoption was legalized. We propose to require a title IV–E agency to indicate ''foster care adoption in another State or Tribal service area'' if the child was in foster care in another State or Tribal service area at the time the prior adoption was legalized. We propose to require a title IV–E agency to indicate ''intercountry adoption'' if the child had a prior adoption that occurred in another country, or was finalized in the United States after the child was brought into the country for the purposes of the prior adoption. Finally, we propose to require a title IV–E agency to indicate ''other private or independent adoption'' if the child's prior adoption was neither a foster care adoption nor an intercountry adoption as defined above. This proposal to require the title IV–E agency to report each prior adoption type is necessary to accommodate our overall proposal to require title IV–E agencies to report multiple adoption type(s) if a child experienced more than one prior adoption.

For the purposes of AFCARS, ''another country'' in the definition of ''intercountry adoption'' means any country other than the United States. As described in the 2008 NPRM, we seek this information primarily in response to the requirements in section 422(b)(12) of the Act, which require the CFSP and Annual Progress and Services Report (APSR) to collect and report certain information on children who are adopted from other countries and who enter the custody of a title IV–E agency as a result of the disruption of an adoption placement or the dissolution of that adoption.

We seek this information to allow us to compile the number of children and jurisdiction(s) from where such children originated to inform permanency planning for children involved in disrupted or dissolved adoptions. We believe that collecting this information in AFCARS will provide more nuanced information on disrupted or dissolved adoptions because we will be able to collect information at the case level, rather than in aggregate per the current CFSP/APSR reporting method. Several commenters to the 2008 NPRM indicated concern regarding the time and burden for caseworkers involved in collecting data on prior adoptions, particularly for prior interstate and intercountry adoptions. However, we believe this information is collected as part of the case assessment of the child and family and that including this data element will provide critical information on international adoptees moving into foster care. Additionally, it will contribute to our knowledge surrounding disrupted or dissolved adoptions.

Prior adoption jurisdiction(s). In paragraph (b)(13)(iii), we propose to require a title IV–E agency to submit the name of the State, Tribal service area, Indian reservation, or country in which the child was previously adopted. A title IV–E agency must collect this information only for each prior adoption noted in paragraph (b)(13)(ii) that occurred outside of the reporting State or Tribal service area; otherwise the title IV–E agency must leave this data element blank. This data element is not in the current AFCARS and was first proposed in the 2008 NPRM. The current proposal differs from the 2008 NPRM, which required title IV–E agencies to submit the FIPS code that corresponded with the State or country

in which the child was previously adopted. We modified this data element to remove FIPS codes, which are no longer being maintained and updated. In addition, FIPS codes do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes and other countries. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

We propose to collect the jurisdiction of each prior adoption so that we can calculate accurately the dissolution and disruption rates for each jurisdiction in which the child experienced a finalized adoption. Further, collecting information on the country in the case of a prior intercountry adoption will inform our understanding of disrupted or dissolved intercountry adoptions consistent with the requirements in section 422(b)(12) of the Act.

Prior guardianship. In paragraph (b)(14), we propose, for the first time, to require title IV–E agencies to collect and report information on whether or not the child experienced one or more prior legal guardianship(s). For the purposes of AFCARS, the definition of legal guardian is consistent with that provided in section 475(7) of the Act and means ''a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the person, custody of the person, and decision making.'' If the child experienced a prior legal guardianship, we propose to require the title IV–E agency to submit the legal guardianship date and type in paragraphs (i) and (ii) for each prior guardianship indicated in this paragraph and jurisdiction information in paragraph (iii) for each prior guardianship indicated in paragraph (b)(14)(ii) that occurred outside of the reporting State or Tribal service area; otherwise the title IV–E agency must leave those paragraphs blank. We propose to require the title IV–E agency to collect information on whether a child had or had not experienced a prior guardianship or if information is unknown because the child has been abandoned. We also are clarifying that the title IV–E agency is to report any type of prior legal guardianship in this element, regardless of whether the guardianship was public, private or independent.

We propose to collect this information because, similar to our proposal to collect information on prior adoption(s), it is important to determine the number of children who have experienced one or more disrupted legal guardianship(s) before entering out-of-home care in order to better understand the potential impact of prior guardianships on permanency planning for these children. Further, because Public Law 110–351 established the option for title IV–E agencies to establish Guardianship Assistance Programs in section 473(d) of the Act, it is important to collect parallel information on both legal guardianships and adoptions.

Prior guardianship date(s). In paragraph (b)(14)(i), we propose that a title IV–E agency report the month and year that each prior legal guardianship the child experienced became legalized, if one or more prior legal guardianship was indicated in paragraph (b)(14). We seek this information to allow us to determine how much time has elapsed between the child's previous legal guardianship(s) and his or her current out-of-home care stay.

Prior guardianship type(s). In paragraph (b)(14)(ii), we seek information on the type of legal guardianship for each legal guardianship the child experienced previously, as indicated in paragraph (b)(14). We propose to require a title IV–E agency to indicate ''foster care guardianship within State or Tribal service area'' if the child was in foster care in the reporting State or Tribal service area at the time the prior guardianship was legalized. This includes all legal guardianships for children formerly in foster care, including legal guardianships funded only by the State or Tribal service area, legal guardianships funded under title IV–E waivers, and legal guardianships funded under the title IV–E guardianship assistance program, per section 473(d) of the Act. We propose to require a title IV–E agency to indicate ''foster care guardianship in another State or Tribal service area'' if the child was in foster care in another State or Tribal service area at the time the prior legal guardianship was legalized. Finally, we propose to require a title IV–E agency to indicate ''other private or independent guardianship'' if the child's prior legal guardianship was not a foster care guardianship as defined above.

We seek this information to allow us to compile the number of children and permanency plans for children involved in dissolved or disrupted legal guardianships and jurisdiction from where such children originated. We also believe it is important that title IV–E agencies collect parallel information on prior legal guardianship and adoption placements to inform our understanding of permanency outcomes as title IV–E agencies begin to implement the title IV–E guardianship assistance program, established by Public Law 110–351, in section 473(d) of the Act.

Prior guardianship jurisdiction(s). In paragraph (b)(14)(iii), we propose that a title IV–E agency submit the name of the other State, Tribal service area or Indian reservation in which the child was previously in a guardianship, for each prior legal guardianship indicated in paragraph (ii) that occurred outside of the reporting State or Tribal service area. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

As previously mentioned, we seek this information to parallel information collected on prior adoption placements to inform our understanding of permanency outcomes as title IV–E agencies begin to implement the title IV–E guardianship assistance program established by Public Law 110–351, per section 473(d) of the Act.

Minor parent. In paragraph (b)(15), we propose that the title IV–E agency collect and report the number of children either fathered or borne by the child, if applicable. Title IV–E agencies must report the total of all biological children of the child, whether or not such children live with their parent. Title IV–E agencies are not currently required to report this information in AFCARS. We proposed this data element for the first time in the 2008 NPRM in response to public comments that requested a data element of this nature. Our current proposal is identical to that proposed in the 2008 NPRM. However, in our current proposal we clarify that title IV–E agencies must report a child older than age 18 in foster care as a ''minor parent'' if he or she has children.

Collecting information on minor parents in foster care will allow us to analyze the extent to which having children affects a child's permanency plan. This data element also will be used in conjunction with a subsequent data element in proposed paragraph 1355.43(e)(14) to determine the population of children in out-of-home care who have children for whom they are responsible for and are living with. The combination of information in the two data elements will allow us to determine the number of children in out-of-home care who have children, and the extent to which those children are responsible for the care of their own children.

Public comments in response to the 2008 NPRM highlighted concerns about caseworker burden and the difficulties involved in collecting accurate and

reliable information about children fathered by children in out-of-home care. However, we continue to propose this data element because we feel it is critical to have improved data about the characteristics of children in out-of-home care.

Child financial and medical assistance. In paragraph (b)(16), we propose to require that the title IV–E agency report any type(s) of financial and medical assistance (other than title IV–E assistance) that the child received during the current six-month report period. We propose that title IV–E agencies indicate if the child is receiving any source of support described in paragraphs (i) through (vii), as applicable, or indicate ''no support/assistance received'' if none of the described supports are applicable to the child. Paragraphs (i) through (vii) describe the following sources of support/assistance: Benefits under title XVI of the Act (including Supplemental Security Income (SSI)), title XIX Medicaid, the State's Children's Health Insurance Program (SCHIP) including under title XXI waivers or demonstrations a State/Tribal or locally financed adoption assistance payment, a State/Tribal or locally financed foster care payment, child support or other sources of financial assistance.

While the existing AFCARS data elements require title IV–E agencies to report the sources of Federal support for the child, this data element differs in that it focuses on both State/Tribal and Federal financial and medical assistance rather than just Federal support. This proposal is identical to the 2008 NPRM proposal, which details that the reason for modifying the existing AFCARS data element is section 479(c)(3)(D) of the Act, requiring us to collect national information on ''the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs.''

There were several commenters that responded to both the 2008 NPRM and 2010 FR notice indicating concern about the burden and responsibility of caseworkers in obtaining information from other agencies, as well as the lack of staff and resources to collect this information. However, given the statutory requirement at section 479(c)(3)(D) of the Act, we believe that expanding the scope of the financial and medical assistance data elements to gather more information on sources of assistance received by the child is required under law. This proposed data element, in conjunction with the following data element on receipt of title IV–E foster care maintenance payments in each living arrangement (paragraph(e)), will allow us to gather more comprehensive information on the kinds of financial and medical assistance that support children in out-of-home care. We also believe that most case management information systems currently collect this information.

Title IV–E foster care during report period. In paragraph (b)(17), we propose to require the title IV–E agency to report specifically whether the child received a title IV–E foster care maintenance payment during the current report period. This information is currently collected in AFCARS under the data element ''sources of Federal support/assistance for child.'' This data element is the same as that proposed in the 2008 NPRM. The title IV–E agency is to respond affirmatively that the child has received a title IV–E foster care maintenance payment only if one was paid on the child's behalf during the current six-month report period, or the child is eligible for the program in accordance with section 472(a) of the Act and the title IV–E agency will claim Federal reimbursement under section 474 of the Act for a child's title IV–E foster care maintenance payment during the current six-month report period.

As detailed in the 2008 NPRM, this data element is used primarily to extract the title IV–E foster care eligibility review samples. Currently, the title IV–E foster care eligibility review sample is drawn from an existing AFCARS data element that requires title IV–E agencies to identify title IV–E foster care maintenance payments as one of many Federal sources of support for the child. We have learned through technical assistance and AFCARS assessment reviews, however, that title IV–E agencies often report this data element incorrectly. A common mistake with the existing data element involves the title IV–E agency indicating that the child is receiving title IV–E foster care maintenance payments when the child has met some title IV–E eligibility requirements but not all (*e.g.,* the child has met AFDC and legal requirements but is not placed in a licensed foster family home or child care institution.) We wish to isolate this data element so that we can clearly define the population of children in AFCARS data that are receiving title IV–E during the report period and improve the ability to select accurate samples for the title IV–E foster care eligibility reviews.

Victim of sex trafficking and victim of sex trafficking while in foster care. In paragraphs (b)(18) and (b)(19), we propose to require the title IV–E agency to report whether a child was a victim of sex trafficking prior to entering foster care and if while in foster care became a victim of sex trafficking, as required by Public Law 113–183. The term ''sex trafficking victim'' is defined in the law and means a victim of sex trafficking as defined in section 103(10) of the Trafficking Victims Protection Act of 2000 or a severe form of trafficking in persons described in section 103(9)(A) of such Act. Section 105 of Public Law 113–183 requires HHS to report to Congress on information related to section 471(a)(35) of the Act. Thus, we propose to collect information regarding whether or not the title IV–E agency has made a report to law enforcement for entry into the National Crime Information Center (NCIC) database, as well as the date the agency made the report to law enforcement. We propose that this information be collected both for a child who was a victim of sex trafficking prior to coming into foster care and while in foster care.

We are not proposing to retain the following data elements included in the 2008 NPRM, due to further consideration of the value of these elements in relation to the burden these elements would impose on the title IV–E agency. There also was overwhelming opposition to each of these elements in public comments:

Child language. We proposed to require the title IV–E agency to report the child's use of language. However, we are not retaining this proposal due to the burden associated with implementing this element given the subjective nature of the proposed response options ''verbal, pre-verbal, and non-verbal'' and the potential for variability in response options. In addition, public comments to the 2008 NPRM strongly opposed the addition of this element.

Current immunizations. We proposed to require a title IV–E agency to indicate whether the child's immunizations are current as of the end of the report period. We are not retaining this proposal because we believe that the information collected in paragraph (b)(6) on whether the child is receiving timely health assessments will serve as a proxy for whether immunizations are being addressed in a timely manner for each child in foster care. There also was strong opposition to the inclusion of this element in the public comments to the 2008 NPRM.

Number of siblings living with the child at removal. We proposed to require the title IV–E agency to report the total number of siblings living with the child at the time of the child's removal from home, if any. We are not retaining this proposal to include this element due to the burden imposed on the title IV–E agency in collecting

information on siblings in a variety of living situations that may not be involved with the title IV–E agency. There also was strong opposition to adding this element in the public comments to the NPRM. We still believe that it is critical to gain a better understanding of how title IV–E agencies are preserving sibling connections, and therefore propose to capture some sibling information in a different manner in newly proposed paragraphs (e)(8) through (e)(13).

Finally, ACF is committed to supporting and protecting lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care. Research has shown that LGBTQ youth are often overrepresented in the population of youth served by the child welfare system and in the population of youth living on the streets, however there is little or no data on the experiences of these youth.

Despite the value in collecting data on LGBTQ youth in AFCARS there are practical issues associated with incorporating this information into AFCARS data collection. First, we did not receive comments requesting such data in the 2008 NPRM and States have not requested the insertion of such response options. Second, including data elements on LGBTQ youth would potentially mean that data would not be consistent across AFCARS and NYTD. NYTD serves as the only mechanism we have at the federal level to receive comprehensive data on the services a youth receives from the state IV–E agency, as well as the experiences of former foster youth. We included the requirement that the child's record number must be the same in NYTD and AFCARS so that we could link both datasets to have the necessary foundation to conduct case-level analysis on the foster care experiences of youth whose outcomes are reported in NYTD. If response options are not consistent for data elements (*i.e.*, child sex) in AFCARS and NYTD, it could mean that a youth would be identified as two different genders, which would complicate our ability to analyze the overall experience of child.

We seek public comment on whether to collect information on LGBTQ youth in AFCARS in light of these practical issues and strategies for identifying LGBTQ youth in the AFCARS reporting population in a manner that permits case-level data analysis between existing federal data collection efforts. Accordingly, we invite comments on the issues of whether we should collect data relating to LGBTQ statuses; what, if any, data should be collected relating to these statuses; what the utility of such data collection might be; what issues would arise if there were inconsistent approaches between AFCARS and NTYD; and how to best address such inconsistencies if a decision is made for expanded data collection relating to LGBTQ statuses.

Section 1355.43(c) Parent or Legal Guardian Information

In paragraph (c), we seek information on the child's parent(s) or legal guardian(s).

Year of birth of parent(s) or legal guardian(s). In paragraphs (c)(1)(i) and (c)(2)(i), we propose that the title IV–E agency collect and report the birth year of the child's parent(s) or legal guardian(s). This can be a biological, legal or adoptive parent or legal guardian. We seek this information on the child's parent(s) or legal guardian(s) regardless of whether the child is living with a different or temporary caretaker or is in a facility/hospital at the time of removal. We are not seeking information on putative birth parent(s) in this paragraph. Further, to the extent that a child has both a parent and a legal guardian, the title IV–E agency must report on those who had legal responsibility for the child. If the title IV–E agency cannot obtain this information because the child is abandoned or left at a ''safe haven,'' the title IV–E agency must indicate ''abandoned.'' If there is only one parent or legal guardian, we propose that the title IV–E agency indicate ''not applicable'' in paragraph (c)(2)(i).

These data elements differ from the existing AFCARS in that we currently request the year of birth of the child's caretakers from whom the child was removed (see Appendix A to part 1355, section II, VII.B). The information collected under the existing regulation does not clearly indicate whether the child's caretaker(s) was the parent(s), legal guardian(s), or some other person who was temporarily taking care of the child at the time that the child was removed from home. Because of this lack of clarity, our ability to analyze the existing data is limited.

This proposal is the same as in the 2008 NPRM and we believe that focusing the proposed data elements on the child's parent(s) or legal guardian(s) is more consistent with the statutory mandate to collect demographic information on the biological and adoptive parent(s) of children in foster care (section 479(c)(3)(A) of the Act). By expanding our requirement to gather the year of birth of all parents (*e.g.*, inclusive of biological, legal or adoptive parents and stepparents) or legal guardians, we believe we are better meeting the intent of the statute to understand the characteristics of persons who are legally responsible for children who enter foster care.

Parent(s) or legal guardian(s) born in the United States. In paragraphs (c)(1)(ii) and (c)(2)(ii), we propose to require the title IV–E agency to report whether or not the child's parent(s) or legal guardian(s) were born in the United States. This can be a biological, legal or adoptive parent or legal guardian. We seek this information on the child's parent(s) or legal guardian(s) regardless of whether the child is living with a different or temporary caretaker or is in a facility/hospital at the time of removal. If the title IV–E agency cannot obtain this information because the child is abandoned or left at a ''safe haven,'' the title IV–E agency must indicate ''abandoned.'' If there is only one parent or legal guardian, we propose that the title IV–E agency indicate ''not applicable'' in paragraph (c)(2)(ii).

This is a newly proposed element and will give us a national picture of how many parent(s) or legal guardian(s) of children in out-of-home care are foreign-born. We specifically request comments from State and Tribal title IV–E agencies on this data element.

Termination of parental rights petition. In paragraph (c)(3)(i), we propose to require the title IV–E agency to report each date the title IV–E agency filed a petition to terminate parental rights (TPR) regarding the child's biological, legal, and/or putative parent(s). If the parent is deceased, we propose that the title IV–E agency indicate ''deceased.'' This information will provide us with data we can use to evaluate how title IV–E agencies are complying with the requirement in section 475(5)(E) of the Act to file a petition to terminate the parental rights of certain children in foster care, unless there is an exception. Further, this information, in conjunction with information collected on final dates of TPR in paragraphs 1355.43(c)(4) and (c)(6) and section 1355.44(c)(5), will help us determine how long it takes for permanency to be achieved for children who are adopted. The title IV–E agency must report each petition date in cases where there are multiple petitions that are filed. In order to be able to properly calculate the time lapse between the petition date and the TPR date in paragraph (c)(3)(ii), we must require that the title IV–E agency report each petition date. Our proposal to include the date of the TPR petition is similar to the proposal in the 2008 NPRM, where it was proposed for the first time; however, we did not propose that this

data element capture information longitudinally in the 2008 NPRM. We received no comments on this proposal in response to the 2008 NPRM.

As we stated in the 2008 NPRM, for all data elements related to the termination of parental rights, we propose to clarify that we are seeking information on a child's putative father, if applicable. A putative father is a person who is alleged to be the father of a child, or who claims to be the father of a child, at a time when there may not be enough evidence or information available to determine if that is correct. For the existing AFCARS we have fielded questions on whether title IV–E agencies should provide information on putative fathers. Since the parental rights of any putative fathers may need to be terminated before a child legally is free for adoption in some jurisdictions, we want to be clear that we are interested in collecting information on putative fathers as well.

Termination of parental rights. In paragraph (c)(3)(ii), we propose to modify the existing AFCARS requirement for the title IV–E agency to collect and report the date that parental rights are terminated for each biological, legal and/or putative parent, if applicable (see Appendix A to part 1355, section II, VIII). Currently, the title IV–E agency reports only the most recent TPR date(s). We are proposing to modify this existing AFCARS requirement to collect each TPR date so that we can properly calculate the time lapse between the petition date(s) reported in paragraph (c)(3) and the TPR date. ACF will include proper file format for the data elements in paragraph (c)(3)(i) and paragraph (c)(3)(ii) in subsequent guidance on technical submission requirements. Our proposal in the 2008 NPRM was unchanged from the existing AFCARS regulatory requirement and we received no comment. We propose to incorporate our current guidance for the existing AFCARS requirement to require that if there was no termination of parental rights because the parent(s) is deceased, the title IV–E agency must enter the date of death. If the parent(s) died after the TPR date, the title IV–E agency must enter the date of the TPR.

Date of judicial finding of abuse or neglect. In paragraph (c)(4) we propose that the title IV–E agency collect and report to AFCARS the date of the first judicial finding that the child has been subject to child abuse or neglect, if applicable. If there has been no judicial finding of child abuse or neglect by the end of the report period, the title IV–E agency must report ''no date.'' Possible reasons no date would be available include if there is a voluntary relinquishment, a voluntary placement agreement (VPA) between the title IV–E agency and the child or his or her parent(s) or legal guardian(s) or there is no abuse or neglect disposition by the end of the report period. We propose to add this data element to AFCARS for the first time in order to provide additional data that can be available for use in the current CFSRs and other monitoring of timely periodic reviews, permanency hearings and TPR petition filings per section 475(5) of the Act. Title IV–E agencies must comply with these case review requirements in section 475(5) of the Act within specific timeframes which begin with the earlier of the date of the first judicial finding that the child was subjected to child abuse or neglect, or, the date that is 60 calendar days after the date on which the child is removed from the home (see the definition for ''date a child is considered to have entered foster care'' in section 1355.20(a)). Collecting the date of the first judicial finding of abuse or neglect will aid us in calculating these timeframes with more accuracy.

Finally, we propose to eliminate the existing data element on the family structure of the child's caretakers from whom the child was removed (see Appendix A to part 1355, section II, VII.A) because, as we explained in the 2008 NPRM, we believe that the data element on the child's environment at removal in proposed paragraph (d)(3) will provide sufficient information. Additionally, we do not propose a data element to indicate whether the mother was married at time of the child's birth, as we proposed in the 2008 NPRM because many commenters to the 2008 NPRM, including States, members of the public and academics, were opposed to the collection of this data element for reasons including the limited interest, relevance and utility of the data, particularly for children entering foster care from adoptive homes. We found these reasons compelling and as a result we do not propose to collect this information.

Section 1355.43(d) Removal Information

In paragraph (d), we propose to require the title IV–E agency to report information related to the child's removal, regarding each occasion that the child experiences a removal. For each removal that a child experiences, we propose to require the title IV–E agency to report each removal date, the type of environment (household or facility) the child was living in at the time of each removal, the title IV–E agency's authority for placement and care responsibility for each removal and the circumstances surrounding the child and family at the time of each removal.

Currently, title IV–E agencies are required to report AFCARS data only on the child's most recent removal in the report period (see Appendix A to part 1355, section II, III). For the reasons stated throughout this NPRM and in the 2008 NPRM, requiring title IV–E agencies to collect and report longitudinal data will allow us to analyze more accurately the circumstances surrounding a child's entry into and entire experience while in out-of-home care and will provide critical information for Federal efforts to measure outcomes.

Date of child's removal. In paragraphs (d)(1)(i) through (iii), we propose that the title IV–E agency collect and report the date(s) on which the child was removed for each removal of a child who enters the placement and care responsibility of the title IV–E agency. For a child who is removed and is placed initially in foster care (as defined in section 1355.20), we propose in paragraph (i) that the title IV–E agency indicate the date that the title IV–E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV–E agency, we propose in paragraph (ii) that the title IV–E agency indicate the date that the title IV–E agency received placement and care responsibility. For a child who is removed, and is placed initially in a non-foster care setting, we propose in paragraph (iii) that the title IV–E agency indicate the date that the child enters foster care as the date of removal, rather than the date of the removal court order or VPA, because we are not proposing to include these children in the out-of-home care reporting population until they enter foster care (see section 1355.41(a)(1)(i)). In general, the date of removal should be consistent with the child's entry into the out-of-home care reporting population as described in section 1355.41(a).

In the existing AFCARS, the title IV–E agency is required to report the date of the child's first and latest removal from the child's home and placement into foster care (see Appendix A to part 1355, section II, III.A). The information collected in the existing AFCARS does not allow us to analyze accurately the child's repeat foster care re-entry rate or any associated length of time to re-entry, both of which are currently used for the CFSR. We also cannot analyze the child's entire removal history and we

are unable to identify trends that may assist title IV–E agencies in better understanding their data and making program improvements. To address these issues, we proposed in the 2008 NPRM that the title IV–E agency report the child's removal date(s) for each removal that the child experiences. We did not receive comments in response to the 2008 NPRM specific to this data element, and a few commenters to the 2010 FR Notice supported the proposal in the 2008 NPRM. We believe that our current proposal will provide us with better data that we can use to analyze foster care re-entries for outcome measures and other Federal monitoring purposes.

Removal transaction date. In paragraph (d)(2), we propose to require the title IV–E agency to report the transaction date for each of the child's removal dates reported in paragraph (d)(1). The transaction date is a non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) was entered into the information system. We propose that the transaction date must be no later than 30 days after the date of each removal as specified in paragraph (d)(1).

The existing AFCARS requirement is that the transaction date must be no later than 60 days after the child's removal (see Appendix A to part 1355, section II, III.A). The worker has 60 days to enter the date of the child's removal into the information system under the existing AFCARS requirement. In the 2008 NPRM, we proposed to shorten this timeframe, by proposing that the transaction date must be within 15 days of the child's removal. As we stated in the 2008 NPRM, the removal date is one of the most critical data elements in AFCARS and we have found that higher quality and accurate data results when the removal transaction date is close in time to the date that it describes. Commenters to the 2008 NPRM expressed concern over the 15-day timeframe proposed in the 2008 NPRM, citing that it was a drastic change and could jeopardize casework activity, which the commenters felt should take precedence over data entry. Commenters to the 2008 NPRM also expressed concern that the 15-day timeframe would be difficult to meet for non-SACWIS county-administered agencies that may depend on a paper-based information system. Other commenters to the 2008 NPRM proposed a 30-day timeframe for the removal transaction date giving the worker 30 days to enter the date of the child's removal into the information system. We considered the comments from the 2008 NPRM and decided that a 30-day timeframe is acceptable and represents a balanced approach that meets our need to ensure that removal information is timely and also addresses concerns from the commenters.

Environment at removal. In paragraph (d)(3), we propose that the title IV–E agency report the type of environment (household or facility) the child was living in at the time of the child's removal for each removal reported in paragraph (d)(1). Although we proposed in the 2008 NPRM to collect similar information, this is a new data element where we propose to require the title IV–E agency to report whether the child was living in a household with his or her parent(s), relative(s) or legal guardian(s), or if the child was living in a justice facility or a medical/mental health facility or in another situation not so described at the time of each removal reported in paragraph (d)(1).

We propose the response options to be mutually exclusive, consistent with commenter concerns in response to the 2008 NPRM. For example, we propose that if the child was living in a household that consisted of one of the child's parents and a relative at the time of the child's removal, the title IV–E agency must indicate the response option ''parent household.'' We propose that the title IV–E agency indicate ''justice facility'' if, at the time of the child's removal, as indicated in paragraph (d)(1), the child was living in a juvenile justice or adult criminal justice facility where the child is detained. We propose that the title IV–E agency indicate ''medical/mental health facility'' if, at the time of the child's removal as indicated in paragraph (d)(1), the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. We propose that the title IV–E agency select the response option ''other'' for environments that are not addressed by the other response options listed (*e.g.*, living independently). The information collected in the existing AFCARS is insufficient for our analytical needs. We propose this new data element so that we may have a more accurate picture of the child's life when the child is placed in foster care. The longitudinal information gleaned from this data element will enhance our analyses regarding a child's entry into foster care and may assist title IV–E agencies in better understanding their foster care populations.

In the existing AFCARS, the title IV–E agency reports limited information about the child's ''principal caretakers,'' reporting only the marital status and year of birth of the principal caretaker(s) from whom the child was removed (see Appendix A to part 1355, section II, VII). In the 2008 NPRM, we proposed to broaden the information reported to AFCARS by proposing two new data elements, ''environment at removal'' and ''household composition at removal'', in which the title IV–E agency would have had to report if the child was living in a household at the time of removal and if so, whether the child was living with one or more of a list of persons identified by their relationship to the child. If the child was not living in a household, we proposed to require the title IV–E agency to report whether the child was living in another environment/facility or was abandoned. We now propose to combine the previously proposed data elements ''environment at removal'' and ''household composition at removal'' from the 2008 NPRM and modify the response options.

We received many comments on the data elements ''environment at removal'' and ''household composition at removal'' as proposed in the 2008 NPRM. Some commenters to the 2008 NPRM supported collecting more detailed information on family composition while other commenters felt that the information gathered in the existing AFCARS was sufficient. Some commenters to the 2008 NPRM expressed confusion over whom to report as present in the household because the proposed response options were not mutually exclusive which could lead to an interpretation that multiple people were living in a household which may not be accurate. Other commenters to the 2008 NPRM said that reprogramming their SACWIS systems to capture this information was burdensome and questioned the value of such detailed information at the Federal level.

In the 2010 FR Notice, we solicited feedback, and received many comments, on what data, if any, should be collected from child welfare agencies to provide insight into what environment a child is removed from before entering foster care. Some commenters to the 2010 FR Notice objected to collecting and reporting more detail on a child's household or environment at removal for various reasons, such as that such household or environmental characteristics are better captured in the case plan and aligning the AFCARS data elements with the NCANDS data elements. Other commenters to the 2010 FR Notice expressed support for collecting more information on a child's household or environment at removal, stating that it would be beneficial to

know more details about a child's family structure. Some commenters suggested collecting general information on a child's environment at removal, stating that it would be problematic to collect overly detailed information given the wide variety of households or environments from which a child could be removed.

We revisited the previously proposed data elements ''environment at removal'' and ''household composition at removal'' from the 2008 NPRM in light of the comments we received to the 2008 NPRM, the 2010 FR Notice and the changes to section 475(8) of the Act, made by Pub. L. 110–351, which allows for the inclusion of children age 18 and older in title IV–E funded foster care. We understand the issues raised by the commenters and decided that combining the data elements will be simpler and less confusing. We believe that this streamlined approach achieves our goal of obtaining greater detail than exists currently in order to support more sophisticated analysis and also addresses commenters concerns about burden and clarity.

Authority for placement and care responsibility. In paragraph (d)(4), we propose to require the title IV–E agency to indicate, for each removal reported in paragraph (d)(1), whether the title IV–E agency's authority for placement and care responsibility of the child was based on a court order or a VPA or to indicate if the type of authority has not yet been determined. If the title IV–E agency indicates that the authority is not yet determined, such information must be provided in a subsequent report period when it is available, if the child remains in out-of-home care. In addition, we modified the definitions of the response options to clarify that a VPA includes voluntary agreements entered into by a child age 18 or older with the title IV–E agency, allowing the title IV–E agency to have placement and care responsibility of the older child. We are proposing that the title IV–E agency report the initial authority for placement and care responsibility, which remains the same even if the authority subsequently changes.

Our proposal is generally unchanged from the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.A), and the 2008 NPRM proposal, wherein the title IV–E agency must collect and report its authority for the child's removal from home. We also propose to modify the name of the data element and the definitions for the response options to clarify that the title IV–E agency must report its authority for placement and care responsibility of the child, instead of the ''manner of removal from home'' as in the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.A).

Child and family circumstances at removal. In paragraph (d)(5), we propose to require the title IV–E agency to report the circumstances surrounding the child and family for each removal reported in paragraph (d)(1). We propose that the title IV–E agency indicate whether each circumstance listed in paragraphs (d)(5)(i) through (d)(5)(xxvii) ''applies'' or ''does not apply'' for each removal reported in paragraph (d)(1).

Our proposal in paragraph (d)(5) is largely the same as the current AFCARS requirement and the 2008 NPRM. In the existing AFCARS, the title IV–E agency is required to report all of the ''actions or conditions'' associated with the child's most recent removal from a short list of response options (see Appendix A to part 1355, section II, IV.B). Similar to the 2008 NPRM, we propose to retain the current feature of AFCARS to require the title IV–E agency to indicate all of the circumstances that are associated with each removal; however, we propose an expanded list of circumstances which we have modified from the 2008 NPRM proposal. We propose the term ''associated with removal'' to mean all circumstances that are present at the time of each removal, in addition to the circumstances related to the child being placed into foster care.

We propose that the title IV–E agency report an expanded list of child and family circumstances from the list in the existing AFCARS; however, we modify the circumstances that were proposed in the 2008 NPRM based on the comments in response to the 2008 NPRM and 2010 FR Notice and the changes to section 475(8) of the Act allowing children age 18 or older to receive title IV–E foster care maintenance payments. The definition for each circumstance is described in paragraphs (d)(5)(i) through (d)(5)(xxvii). Commenters to both the 2008 NPRM and 2010 FR Notice suggested additional circumstances and some of the suggestions from the 2010 FR Notice are included in this proposal (*e.g.*, domestic violence is proposed as a circumstance). We believe that we needed to balance concerns over burden with suggestions for additional data so we chose to revise the circumstances proposed previously in the 2008 NPRM as needed instead of adding all of the circumstances suggested by commenters. Each response option is explained in detail below.

(i) *Runaway.* In paragraph (d)(5)(i), we propose that the title IV–E agency collect and report whether the child has left, without authorization, the home or facility in which the child was residing at the time of each removal reported in paragraph (d)(1). We modified our proposal from the existing AFCARS requirement and the 2008 NPRM. The title IV–E agency currently reports running away in the ''child's behavior problem'' response option in the existing AFCARS (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to require the title IV–E agency to collect and report running away as a separate child and family circumstance. Commenters in response to the 2008 NPRM expressed concern with data quality, stating that title IV–E agencies may differ in how they define ''runaway.'' We understand from commenters to the 2008 NPRM that there may be confusion with the definition proposed in the 2008 NPRM so we clarified the definition to address commenter concerns and to conform to the proposed changes to the reporting population in section 1355.41(a) that includes children age 18 or older who are in foster care (as defined in section 1355.20).

(ii) *Whereabouts unknown.* In paragraph (d)(5)(ii), we propose that the title IV–E agency collect and report whether, as a circumstance at removal, the child's whereabouts are unknown and the title IV–E agency does not consider the child to have run away at the time of each removal reported in paragraph (d)(1). This is a new response option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. We propose it now based on stakeholder feedback we received in response to the 2008 NPRM asking to add a separate response option for a child whose whereabouts are unknown at the time of removal. This new response option will enable ACF to provide information and conduct analysis on children who are in the title IV–E agency's placement and care responsibility but whose whereabouts are unknown. We believe that the quality of the data will be better if we collect this as a separate circumstance from running away because not all children whose whereabouts are unknown at the time of removal have run away. We believe that collecting this information as a separate circumstance at removal is a reasonable way to begin collecting quantifiable data on these children.

(iii) *Physical abuse.* In paragraph (d)(5)(iii), we propose that the title IV–E agency continue to collect and report whether alleged or substantiated physical abuse, injury or maltreatment by a person responsible for the child's welfare was a circumstance associated

with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition which captures both substantiated and alleged child physical maltreatment (see Appendix A to part 1355, section II, IV.B). Commenters in response to the 2008 NPRM asked us to consider making the definitions of physical abuse the same for NCANDS and AFCARS. As we explained in the 2008 NPRM, the NCANDS definition does not capture alleged physical abuse, which is necessary for AFCARS because it is unlikely that physical abuse will have been substantiated in all cases when the child is removed.

(iv) *Sexual abuse.* In paragraph (d)(5)(iv), we propose that the title IV–E agency continue to collect and report whether alleged or substantiated sexual abuse or exploitation by a person responsible for the child's welfare was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition which captures both substantiated and alleged child sexual maltreatment (see Appendix A to part 1355, section II, IV.B). As we explained in the 2008 NPRM, sexual abuse remains a significant condition associated with the child's removal. It is important to capture alleged sexual abuse in AFCARS because it is unlikely that sexual abuse will have been substantiated in all cases when the child is removed. We did not receive comments on this response option in response to the 2008 NPRM.

(v) *Psychological or emotional abuse.* In paragraph (d)(5)(v), we propose that the title IV–E agency collect and report whether alleged or substantiated psychological or emotional abuse, including verbal abuse, by a person who is responsible for the child's welfare was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM, which is for psychological or emotional abuse to be reported as a separate circumstance, rather than part of the definition of ''neglect,'' as instructed in current AFCARS policy (see section 1.2B.3 of the Child Welfare Policy Manual (CWPM), Question and Answer #3). As we explained in the 2008 NPRM, we believe that it is useful to make a distinction between circumstances of neglect and psychological or emotional abuse at removal. We did not receive comments on this response option in response to the 2008 NPRM.

(vi) *Neglect.* In paragraph (d)(5)(vi), we propose that the title IV–E agency continue to collect and report whether neglect was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM we proposed to differentiate between ''failure to provide supervision'' and ''neglect'' by proposing them as separate response options. Commenters in response to the 2008 NPRM stated that separating ''failure to provide supervision'' from the definition of ''neglect'' would be confusing for workers and did not add analytical value because not providing supervision is one of the key elements for a circumstance of neglect. To address the comments, we now propose to keep a failure to provide supervision as part of the definition of ''neglect'' as in the existing AFCARS requirement.

(vii) *Medical neglect.* In paragraph (d)(5)(vii), we propose that the title IV–E agency collect and report whether medical neglect was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM where we proposed the definition of ''medical neglect'' to be ''alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so.'' The title IV–E agency is not required to report information on medical neglect separately from a circumstance of ''neglect'' in the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). We believe that it is useful to make a distinction between a circumstance of neglect and medical neglect at removal. We received supportive comments for adding this response option and the proposed definition in response to the 2008 NPRM.

(viii) *Domestic violence.* In paragraph (d)(5)(viii), we propose that the title IV–E agency collect and report whether domestic violence was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define domestic violence as alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner or the child and his or her partner if the child is age 18 or older. The title IV–E agency is not required to report this information in the existing AFCARS. As we explained in the 2008 NPRM, we do not want to limit the definition of domestic violence, for example, to violence occurring between spouses or parent figures, as in NCANDS. Additionally, we want to capture allegations of domestic violence, which the NCANDS definition does not address, because at the time of removal, workers are likely to have allegations of conduct to report to AFCARS, and not always substantiations. Similar to our proposal in the 2008 NPRM, we consider ''domestic violence'' broadly to mean any person who is or was a partner to an adult living in the home and now including the child if the child is age 18 or older. We believe that this broad definition accurately reflects the reality of many domestic violence circumstances. Commenters to the 2008 NPRM and 2010 FR Notice were supportive of including ''domestic violence'' as a circumstance at removal; however, we had to modify the definition from the 2008 NPRM to include children age 18 or older who enter foster care.

(ix) *Abandonment.* In paragraph (d)(5)(ix), we propose that the title IV–E agency continue to report if abandonment was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM, which is for the title IV–E agency to report a circumstance of abandonment if the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained, including if the child was left at a ''safe haven.'' Also unchanged from our proposal in the 2008 NPRM is that this response option does not apply when the identity of the parent(s) or legal guardian(s) is known. The title IV–E agency must report those situations as a failure for the parent(s) or legal guardian(s) to return for the child in paragraph (d)(5)(x).

In the existing AFCARS, abandonment is defined as leaving a child alone or with others and the caretaker does not return or make his or her whereabouts known (see Appendix A to part 1355, section II, IV.B). The major difference between the proposed definition and the existing AFCARS definition is that this proposal only includes as abandonment the circumstance where the identity of the parent(s) or legal guardian(s) is unknown. That is not always the case under the current AFCARS, since the definition of abandonment is broader and encompasses both the situations in which the title IV–E agency knows the

identity of the parent(s) or legal guardian(s), and when it does not. As explained in the 2008 NPRM, we propose this change so that we can identify the truly abandoned child from a child who is left with others and the title IV–E agency knows the identity of the parent(s) or legal guardian(s). With this change, ACF will be able to identify the number of cases of abandoned children in which the parent(s) has left the child alone, with someone, or somewhere, but have not made their identity known. Further, the permanency planning needs of these children are different from those of a child whose parent(s) are known because both under the Child Abuse Protection and Treatment Act (CAPTA) program and the title IV–E program, title IV–E agencies are required to expedite permanency for an abandoned child since there is not an identified parent with whom the title IV–E agency can work toward reunification. Commenters in response to the 2008 NPRM felt that the circumstance of abandonment was redundant if the title IV–E agency selected ''abandoned'' in data element ''environment at removal'' as proposed in the 2008 NPRM. We believe that we addressed this comment through our proposed revisions to paragraph (d)(3) because we propose in paragraph (d)(3) to collect the type of household or facility in which the child was living at removal, which does not include an ''abandoned'' response option. Other commenters to the 2008 NPRM suggested that we collect information on whether the child was abandoned in safe or unsafe circumstances; however, we did not make that change as we do not have a specific reason or purpose to collect this level of detail.

(x) *Failure to return.* In paragraph (d)(5)(x), we propose that the title IV–E agency report if the child's parent(s), legal guardian(s) or caretaker(s) leaves the child alone or with others and does not return for the child or make his or her location known to the title IV–E agency for each removal reported in paragraph (d)(1). As stated in paragraph (d)(5)(ix), the title IV–E agency must report that this circumstance ''applies'' if the identity of the parent(s), legal guardian(s) or caretaker(s) is known. Our proposal is unchanged from the 2008 NPRM, in which we propose to require that the title IV–E agency report the circumstance ''failure to return'' as a separate response option from ''abandonment'' so that we can identify a truly abandoned child from one where the identity of the parent(s), legal guardian(s) or caretaker(s) is known but he or she does not make him or herself available to the child. In the existing AFCARS, ''failure to return'' is included in the definition for the ''abandonment'' circumstance (see Appendix A to part 1355, section II, IV.B). Commenters to the 2008 NPRM felt that it was unnecessary to separate ''failure to return'' from the definition of ''abandonment.'' We considered the comment but we still feel that this distinction is important to make for analytical purposes and for collecting expanded information on a child's life at removal.

(xi) *Caretaker's alcohol abuse.* In paragraph (d)(5)(xi), we propose that the title IV–E agency continue to collect and report whether the compulsive use of alcohol, that is not of a temporary nature, by the child's parent(s), legal guardian(s) or caretaker(s) who is responsible for the child was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed that title IV–E agencies report any form of compulsive alcohol use by the child's caretaker, including short-term alcohol abuse, which many commenters to the 2008 NPRM objected to for various reasons. Many commenters to the 2008 NPRM expressed concern that the definition proposed in the 2008 NPRM differed from the NCANDS definition and questioned the overall value of the change. Other commenters to the 2008 NPRM expressed concerns over a worker's ability to distinguish short-term compulsive alcohol abuse from long-term compulsive alcohol abuse which may lead to data quality issues for AFCARS data. The comments we received in response to the 2008 NPRM convinced us to keep the existing AFCARS definition, as it is critical that we have accurate data and this definition is sufficient for data analyses at a Federal level.

(xii) *Caretaker's drug abuse.* In paragraph (d)(5)(xii), we propose that the title IV–E agency continue to collect and report whether the compulsive use of drugs that is not of a temporary nature, by the child's parent(s), legal guardian(s) or caretaker(s) who is responsible for the child was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed that title IV–E agencies report any form of compulsive drug use by the child's caretaker, including short-term drug abuse, which many commenters to the 2008 NPRM objected to for various reasons. We received the same comments in response to the 2008 NPRM for this response option as we received for the response option ''caretaker's alcohol abuse.'' Based on the comments and the reasons described in paragraph (d)(5)(xi), we now propose to keep the current AFCARS definition.

(xiii) *Child alcohol use.* In paragraph (d)(5)(xiii), we propose that the title IV–E agency report whether the child's alcohol use was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). This response option encompasses a child's alcohol use at any age except it does not include infants who are addicted to alcohol at birth or who may be diagnosed with fetal alcohol spectrum disorders. We believe that an infant who is exposed to alcohol in utero is different from a child who uses alcohol of his or her own accord. Our proposal is similar to the 2008 NPRM, however our current proposal removes the word ''compulsive'' from the definition of this response option because we wish to collect information on whether a child's alcohol use was a circumstance at removal regardless of whether the use was compulsive. In the existing AFCARS, the title IV–E agency is required to indicate if the child's compulsive use of or need for alcohol was a circumstance at removal, inclusive of infants who are addicted to alcohol at birth (see Appendix A to part 1355, section II, IV.B). We did not receive comments on this response option in response to the 2008 NPRM.

(xiv) *Child drug use.* In paragraph (d)(5)(xiv), we propose that the title IV–E agency report whether the child's drug use was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). This response option encompasses a child's drug use at any age except it does not include infants who are addicted to drugs at birth. We believe that an infant who is exposed to drugs in utero is different from a child who uses drugs of his or her own accord. Our proposal is similar to the 2008 NPRM, however our current proposal removes the word ''compulsive'' from the definition of this response option because we wish to collect information on whether a child's drug use was a circumstance at removal regardless of whether the use was compulsive. In the existing AFCARS, the title IV–E agency is required to indicate if the child's compulsive use of or need for drugs was a circumstance at removal, inclusive of infants who are addicted to drugs at

birth (see Appendix A to part 1355, section II, IV.B). We did not receive comments on this response option in response to the 2008 NPRM.

(xv) *Prenatal alcohol exposure.* In paragraph (d)(5)(xv), we propose that the title IV–E agency collect and report, for each removal reported in paragraph (d)(1), whether a child has been prenatally exposed to alcohol that has resulted in a fetal alcohol spectrum disorder, such as fetal alcohol exposure, fetal alcohol effects or fetal alcohol syndrome. Our proposal is unchanged from the 2008 NPRM. We believe that a child whose removal circumstances involve prenatal alcohol exposure differs from a child who has his or her own alcohol use issues. In the existing AFCARS, the title IV–E agency is required to report a child's prenatal alcohol exposure as part of the child's own alcohol abuse (see Appendix A to part 1355, section II, IV.B). We received supportive comments in response to both the 2008 NPRM and 2010 FR Notice on this proposal.

(xvi) *Prenatal drug exposure.* In paragraph (d)(5)(xvi), we propose that the title IV–E agency collect and report whether, for each removal reported in paragraph (d)(1), a child has been prenatally exposed to drugs. Our proposal is unchanged from the 2008 NPRM. We believe that a child whose removal circumstances involve prenatal drug exposure is different from a child who has his or her own drug use issues. In the existing AFCARS, the title IV–E agency is required to report the child's prenatal drug exposure as part of the child's own drug abuse (see Appendix A to part 1355, section II, IV.B). We received supportive comments in response to both the 2008 NPRM and 2010 FR Notice on this proposal. A few commenters to the 2008 NPRM expressed an interest in having more detailed information on the type of drug to which the child was exposed. We did not make the change in response to the comment because we do not have a specific purpose to collect that level of detail.

(xvii) *Diagnosed Condition.* In paragraph (d)(5)(xvii), we propose that the title IV–E agency continue to report whether, for each removal reported in paragraph (d)(1), the presence of a child's diagnosed health, behavioral or mental health condition was a circumstance associated with the child's removal, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition. In the existing AFCARS, the title IV–E agency is required to report similar information at removal as part of the ''child disability'' response option (see Appendix A to part 1355, section II, IV.B). Our proposal is unchanged from the 2008 NPRM, where we proposed modifications to the name of this circumstance, ''diagnosed condition,'' and the language of the response option (change from the use of the term ''disability'' to ''condition'') to align with the changes proposed in data element ''health, behavioral or mental health condition'' in paragraph (b)(5) of this section. However we are modifying one of the examples of a diagnosed condition from ''mental retardation'' to ''intellectual disability,'' which is a minor change and is consistent with the modifications in the data element ''health, behavioral or mental health condition'' in paragraph (b)(5) of this section. The changes made by Public Law 111–256 solidified the use of ''intellectual disability'' in Federal law and the increasing focus on sensitivity to the term mental retardation.

(xviii) *Inadequate access to mental health services.* In paragraph (d)(5)(xviii), we propose that the title IV–E agency collect and report whether inadequate access to mental health services was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). This information is not collected in the existing AFCARS. We proposed a new circumstance of ''inadequate access to mental health services'' in the 2008 NPRM that would have captured instances where the parent(s) or legal guardian(s) relinquished his or her placement and care responsibility of a child to a title IV–E agency in order for the child to access mental health services. As stated in the 2008 NPRM, we proposed this response option to help us determine when a child needing mental health services is placed in out-of-home care so that the title IV–E agency can ensure that the child can access mental health services. We received supportive comments in response to the 2008 NPRM for adding this response option; however, we modified the response option to include the child or the child's family having inadequate resources to access mental health services as a circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older who enter foster care.

(xix) *Inadequate access to medical services.* In paragraph (d)(5)(xix), we propose that the title IV–E agency collect and report whether inadequate access to medical services, not including instances of withholding medical services or treatment or medical neglect, was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). This information is not collected in the existing AFCARS. We proposed a new circumstance of ''inadequate access to medical services'' in the 2008 NPRM that would have captured instances where the parent(s) or legal guardian(s) relinquished his or her placement and care responsibility of a child, while retaining custody, to a title IV–E agency in order for the child to access medical services. In the 2008 NPRM we proposed this as a separate response option because we understand that the child may have specific medical needs that are separate from the child's mental health needs; therefore we are adding this circumstance at removal so that title IV–E agencies can indicate all of the possible situations that exist when a child is removed. We received supportive comments in response to the 2008 NPRM for adding this response option; however, we modified the response option to include the child or the child's family having inadequate resources to access medical services as a circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older who enter foster care.

(xx) *Child behavior problem.* In paragraph (d)(5)(xx), we propose that the title IV–E agency continue to collect and report information about whether a child's behavior problem(s) in his or her school and or community was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). This circumstance applies to all child behavior problems that adversely affect his or her socialization, learning, growth and/or moral development, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

In the existing AFCARS, the title IV–E agency is required to report running away and other child behavior problems resulting in adjudication together in the response option ''child behavior problem'' (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to require that title IV–E agencies report as a separate circumstance at removal whether the child was alleged or found to be a status offender or whether the child was alleged or found to be an adjudicated delinquent so that we can categorize clearly a behavioral problem that has already been identified. Commenters in response to the 2008 NPRM objected to our proposal to report juvenile justice

involvement separate from a child behavior problem as a circumstance at removal. Commenters to the 2008 NPRM asked how title IV–E agencies should coordinate with the juvenile justice system to get information on alleged status offenses or alleged delinquencies and felt that reporting alleged status offenders was inappropriate and misleading. Commenters to the 2008 NPRM also felt that separately collecting information on the child's juvenile justice involvement was redundant to the juvenile justice information we proposed in the 2008 NPRM to collect in paragraph (f). The comments we received in response to the 2008 NPRM convinced us to not propose the child's involvement with the juvenile justice system as a separate circumstance at removal and to modify our proposal for the child behavior problem as a circumstance at removal. We propose to modify the definition of the child behavior problem circumstance at removal that is in the existing AFCARS requirement to include behavior that results in adult criminal convictions, in addition to behavior resulting in adjudicated or non-adjudicated status or delinquency offenses. We propose to add behavior that results in convictions to the definition of the ''child behavior problem'' circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older.

(xxi) *Death of caretaker.* In paragraph (d)(5)(xxi), we propose that the title IV–E agency continue to collect and report information on whether the death of the child's parent(s), legal guardian(s) or caretaker(s) was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from that proposed in the 2008 NPRM where we intended to expand the existing AFCARS requirement, which captures the death of a child's parent(s) or caretaker(s) as a circumstance associated with the child's removal (see Appendix A to part 1355, section II, IV.B), to include the death of the child's legal guardian. We did not receive comments in response to the 2008 NPRM on this response option.

(xxii) *Incarceration of caretaker.* In paragraph (d)(5)(xxii), we propose to require the title IV–E agency to continue to collect and report whether the temporary or permanent incarceration of the child's parent(s), legal guardian(s) or caretaker(s) in jail or prison was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from that proposed in the 2008 NPRM where we intended to expand the existing AFCARS requirement, which only captures the temporary or permanent placement of the child's parent(s) in jail as a circumstance associated with the child's removal, to include the incarceration of the child's legal guardian(s). Our proposal to modify the response option to include incarceration in jail or prison is unchanged from the 2008 NPRM because we understand jails and prisons to be two different types of facilities; jails being local facilities used to incarcerate a person for less than a year and prisons being State or Federal facilities that can confine a person for a longer time. We received supportive comments in response to the 2008 NPRM on this response option.

(xxiii) *Caretaker's significant impairment—physical/emotional.* In paragraph (d)(5)(xxiii), we propose that the title IV–E agency continue to collect and report, for each removal reported in paragraph (d)(1), whether the child's parent(s), legal guardian(s) or caretaker(s) has a physical or emotional illness or disabling condition that adversely affects his or her ability to care for the child. We propose ''physical impairment'' to mean the parent(s), legal guardian(s) or caretaker(s) has physical limitations that impact his or her ability to function in areas of daily life, such as a condition that may adversely affect the caretaker's day to day motor functioning. We propose ''emotional impairment'' to mean the parent(s), legal guardian(s) or caretaker(s) has an emotional condition that impact his or her ability to function in areas of daily life such as exhibiting one or more characteristics over a long period of time and to a marked degree, including the inability to build or maintain personal relationships, inappropriate behavior/feelings under normal circumstances, and/or tendency to develop symptoms or fears associated with personal problems. This circumstance could also apply to situations where a caretaker cannot care for a child temporarily due to his or her own medical needs. We have revised our proposal from the existing AFCARS requirement and the 2008 NPRM by updating the language and providing additional explanation to describe physical and emotional impairments. However, we intend to capture the same information as the ''caretaker's inability to cope'' circumstance as proposed in the 2008 NPRM. We did not receive comments in response to the 2008 NPRM on this response option.

(xxiv) *Caretaker's significant impairment—cognitive.* In paragraph (d)(5)(xxiv), we propose that the title IV–E agency collect and report, for each removal reported in paragraph (d)(1), whether the limited cognitive ability of the child's parent(s), legal guardian(s) or caretaker(s) adversely affects his or her ability to care for the child. We propose ''limited cognitive ability'' to mean that the parent(s), legal guardian(s) or caretaker(s) has cognitive limitations that impact his or her ability to function in areas of daily life, such as basic self-care tasks, communication and other tasks necessary to care for the child including shopping, housekeeping, accounting, ability to prepare food, manage medication and navigate transportation. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence. This proposal includes updated language but is intended to capture the same information as the ''limited mental capacity'' circumstance proposed in the 2008 NPRM.

In the existing AFCARS, the title IV–E agency is required to report the caretaker's limited mental capacity as part of the response option ''caretaker's inability to cope'' (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to collect information on the caretaker's limited mental capacity as a separate circumstance associated with the child's removal because we believe low cognitive functioning to be distinct from low emotional functioning. Commenters in response to the 2008 NPRM questioned how the limited mental capacity of a caretaker should be diagnosed and expressed concern that collecting and reporting this information would shift the attention of workers away from child protective services. Commenters in response to the 2010 FR Notice supported collecting a wide range of circumstances that may be present at removal, including a caretaker's limited mental capacity as a separate circumstance associated with the child's removal. As we considered the comments to both the 2008 NPRM and the 2010 FR Notice, we further examined the need for a separate response option. The Office of Planning, Research and Evaluation within ACF reported data on caregiver risk factors at the time of investigation in the April 2005 *National Survey of Child and Adolescent Well-Being: CPS Sample Component, Wave 1 Data Analysis Report.* According to this report, about 15 percent of caregivers were identified by child welfare workers at the time of a child abuse and neglect investigation as having a serious mental health problem; of those, almost seven percent of caregivers were considered to have an

intellectual or cognitive impairment (page 4–8). We believe that the information in this report demonstrates the importance of collecting as much information as possible on a child's life at removal, but recognize that the mental health community is more frequently using the term ''cognitive ability'' instead of ''mental capacity.'' Thus, we have updated the language in this proposal but intend for the information collected to be consistent with that proposed in the 2008 NPRM, based on the supportive comments we received to the 2010 FR Notice and the further research we conducted that demonstrates the need to collect this information in a separate and distinguishable manner.

(xxv) *Inadequate housing.* In paragraph (d)(5)(xxv), we propose that the title IV–E agency continue to collect and report whether inadequate housing was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define ''inadequate housing'' to include housing that is ''substandard, overcrowded, unsafe or otherwise inadequate, which results in it being inappropriate for the child to reside,'' including homelessness. The existing AFCARS requirement and the 2008 NPRM proposal limits ''inadequate housing'' to situations where the child and parent(s) reside together. We modified the existing AFCARS definition and the 2008 NPRM proposal, to include situations where the child is not living with the child's parent or legal guardian and child's housing is inadequate for children age 18 or older who enter foster care. Commenters to the 2008 NPRM suggested separating ''homelessness'' from the definition of ''inadequate housing'' and making it a separate response option. We did not make this change because we do not have a purpose for collecting this level of detail.

(xxvi) *Voluntary relinquishment for adoption.* In paragraph (d)(5)(xxvi), we propose that the title IV–E agency continue to collect and report whether a voluntary relinquishment was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define ''voluntary relinquishment'' as the child's parent(s) assigning, in writing, physical and legal custody of the child to the title IV–E agency, for the purpose of having the child adopted. Any analogous legal process, such as surrendering the child for adoption, is included in this response option. Our proposal is unchanged from that proposed in the 2008 NPRM and is an existing AFCARS requirement (see Appendix A to part 1355, section II, IV.B). We did not receive comments in response to the 2008 NPRM on this response option.

(xxvii) *Child requested placement.* In paragraph (d)(5)(xxvii), we propose that the title IV–E agency collect and report whether, for each removal reported in paragraph (d)(1), the child, age 18 or older, has requested placement into foster care. This is a new response option that we are proposing in order to have a comprehensive list of circumstances that would relate to a child who enters foster care at or after the age of 18. Since 2008, Public Law 110–351 provides title IV–E funds for extended title IV–E foster care as an option for title IV–E agencies. This means that children over age 18 may enter or re-enter the placement and care responsibility of the title IV–E agency. This child and family circumstance, ''child placement'', is unique to a child age 18 or older who may request to enter the placement and care responsibility of the title IV–E agency.

We would like to note that we are not continuing our proposal to include the data element for ''biological parents' marital status'' and two child and family circumstances, ''juvenile justice'' and ''disrupted intercountry adoption,'' that were proposed in the 2008 NPRM due to the overwhelming opposition to the proposals from commenters. In general, commenters to the 2008 NPRM questioned the value of collecting this information in AFCARS; therefore we do not propose to collect this information.

Finally, the plight of children who enter foster care because a parent is detained for immigration or deported has recently come to our attention and we are considering whether to expand the list of child and family circumstances associated with removal to include this information. We seek public comment on this issue, specifically regarding the extent to which this is an issue in States and Tribes, to help us determine the utility and appropriateness of including this information in AFCARS data collection, as well as suggestions for specific language for the circumstance.

Section 1355.43(e) Living Arrangement and Provider Information

In paragraph (e), we propose that the title IV–E agency collect and report information on each of the child's living arrangements for each out-of-home care episode, including information about the providers who are caring for the child, demographics on the child's foster parent(s), information on the child's sibling(s) and the sources of Federal assistance that support the child's room and board in each living arrangement.

In general, we propose to expand the information that we collect in the existing AFCARS by requiring that the title IV–E agency report longitudinal information for most of the data elements in paragraph (e) of this section. We propose, as we did in the 2008 NPRM, to require the title IV–E agency to report the date and type of each of the child's living arrangements for each out-of-home care episode and to report demographics on each of the child's foster parent(s), such as year of birth, race, ethnicity and the child's relationship to his or her foster parent(s). We also propose, as we did in the 2008 NPRM, to expand the types of living arrangements in which the child may be placed to include a variety of placement settings, such as therapeutic foster family homes, group homes that may provide shelter care or be operated by staff or a family, supervised independent living and juvenile justice facilities. In the existing AFCARS, the title IV–E agency is required to report four data elements on the child's current placement setting as of the end of the report period, including the date that the child was placed into the current placement setting, the type of placement setting and whether the placement is out of the State, and provide the number of the child's placement settings during the child's current foster care episode (see Appendix A to part 1355, section II, III.B and V). The information that the title IV–E agency is currently required to report to AFCARS does not provide any detailed information on the type of foster home or facility in which the child is currently living or previously lived. Many stakeholders have long urged us to consider amending the AFCARS regulations with the goal of gathering longitudinal information for children who are in out-of-home care, such as where the child lives for the duration of his or her stay in out-of-home care. We also understand that many title IV–E agencies already have the capability and actively track each of the child's living arrangements. We believe that collecting longitudinal information on each of the child's living arrangements will enhance our analysis of the child's entire experience in out-of-home care and will allow for improved tracking and analysis related to the stability of the child's placements and whether children are moving from one living arrangement to another in support of their permanency plans and overall well-being. We also believe that collecting this expanded information

will enhance our data analysis ability for the CFSRs or other Federal monitoring efforts. Commenters to both the 2008 NPRM and the 2010 FR Notice were supportive of expanding and collecting longitudinal information on each of the child's living arrangements and foster parent(s).

We propose that the title IV–E agency collect and report the information in paragraph (e) for each child in the out-of-home care reporting population regardless of the type of setting in which the child lives, including if the child is placed into a non-foster care setting, such as a hospital or juvenile justice facility, after entering the out-of-home care reporting population. Commenters in response to the 2008 NPRM and the 2010 FR Notice expressed a concern with reporting information on children who are in non-foster care settings, such as juvenile justice facilities. We considered these comments, but did not make changes in paragraph (e) based on those comments because we believe that the title IV–E agency will have placement information for the children who are in their placement and care responsibility.

Date of living arrangement. In paragraph (e)(1), we propose to require the title IV–E agency to collect and report the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. Our proposal is different from the existing AFCARS regulation in which the title IV–E agency must report the date that the child was placed in the current placement setting, or on a trial home visit and a count of how many times the child changed placement settings (see Appendix A to part 1355, section II, III.B). In the 2008 NPRM we did not propose to collect the date that the child is placed at home because we proposed in that NPRM to consider the child to exit the out-of-home care reporting population when the child is placed at home. Our current proposal modifies the 2008 NPRM. We now propose to require the title IV–E agency to report the date that the child is placed at home in paragraph (e)(1) until the title IV–E agency placement and care responsibility ends, which is consistent with the revised out-of-home care reporting population.

We propose that the title IV–E agency report the date that the child is placed by the title IV–E agency in each living arrangement. For a child who ran away, the title IV–E agency must report the date that the title IV–E agency considers the child to have run away. For a child whose whereabouts are unknown by the title IV–E agency, the title IV–E agency must report the date the child's whereabouts became unknown to the title IV–E agency. For a child who is placed at home with his or her parent(s) or legal guardian(s) under the placement and care responsibility of the title IV–E agency, the title IV–E agency must report the date that the child returned home. We are interested in collecting runaway and whereabouts unknown dates in order to calculate the actual time the child is absent from the provider or facility without permission and the title IV–E agency must continue to report on each child in the out-of-home care reporting population until the title IV–E agency's placement and care responsibility ends (see section 1355.41). In the case of a child who is already living in a living arrangement and remains there when the title IV–E agency receives placement and care responsibility of the child, the title IV–E agency must report the date of the VPA or court order providing the title IV–E agency with placement and care responsibility for the child, rather than the date the child began living in the arrangement. An example of this might be a child who was living with a relative prior to a constructive removal who continues to reside in the relative's house after entering foster care.

In paragraphs (e)(2) through (e)(4), we propose that the title IV–E agency indicate the type of living arrangement for the child, for each living arrangement reported in paragraph (e)(1) of this section. In the existing AFCARS regulations, the title IV–E agency is required to report the child's current placement setting from eight options: Pre-adoptive home, relative or non-relative foster family home, group home, institution, supervised independent living, runaway and trial home visit (see Appendix A to part 1355, section II, V.A). We have found that these options, which were intended to be mutually exclusive, do not capture fully the range of living arrangements in which the child may be placed. We believe that more detailed information is needed to better understand the specific types of homes and facilities where children live while in out-of-home care. We essentially propose, as we did in the 2008 NPRM, to split the existing AFCARS data element (see Appendix A to part 1355, section II, V.A) into three data elements and to expand the data that is collected. We propose in paragraph (e)(2) to require the title IV–E agency to report whether each of the child's living arrangements is a foster family home. If the title IV–E agency reports that the child is living in a foster family home, then we propose in paragraph (e)(3) that the title IV–E agency report the type of foster family home by indicating whether each of the six types ''applies'' or ''does not apply.'' If the title IV–E agency reports in paragraph (e)(2) that the child is not living in a foster family home, then we propose in paragraph (e)(4) that the title IV–E agency report one type of other living arrangement from thirteen options. We believe that this new approach to capturing information on each of the child's living arrangements will provide us with a more complete view of the child's actual placements. Commenters in response to the 2008 NPRM were generally supportive of our approach.

We clarified the definitions of the living arrangement options from the 2008 NPRM in response to commenters requesting clearer definitions and to conform to the revised out-of-home care reporting population which includes children who are placed in foster care who subsequently are placed into non-foster care settings. Although in the 2008 NPRM we proposed additional types of living arrangements not currently in AFCARS, our proposal has gone further to include additional types not proposed in the 2008 NPRM to account for the proposed reporting population definition. Each data element is described below in paragraphs (e)(2) through (e)(4).

Foster family home. In paragraph (e)(2), we propose, as we did in the 2008 NPRM, to require the title IV–E agency to report whether each of the child's living arrangements is a foster family home, by indicating ''yes'' or ''no'' as appropriate. In the existing AFCARS, the title IV–E agency is required to report whether the child is living in either a relative or non-relative foster family home as two of seven living arrangement options, however, we propose to obtain more thorough information on foster family homes than relative and non-relative as in the current AFCARS. If the title IV–E agency indicates ''yes,'' then the title IV–E agency must complete the data element in paragraph (e)(3). If the title IV–E agency indicates ''no,'' then the title IV–E agency must report another type of living arrangement in which the child is living in paragraph (e)(4). If the child ran away or the child's whereabouts are unknown, then the title IV–E agency must indicate ''no.''

Foster family home type. In paragraph (e)(3), we propose to require the title IV–E agency to report whether each of the following six types of foster family homes listed in paragraphs (e)(3)(i) through (e)(3)(vi) ''applies'' or ''does not apply'' for each foster family home

reported in paragraph (e)(2): Licensed, therapeutic, provides shelter care, is that of a relative, pre-adoptive home and/or kin family.

This data element is the same as the one proposed in the 2008 NPRM, however, based on comments to the 2008 NPRM, we now propose to add ''kin family foster home'' as an option. In the ''current placement setting'' data element in the existing AFCARS, the title IV–E agency can choose among three options related to foster family homes which were designed to be mutually exclusive: pre-adoptive home, relative foster family home (which could be licensed or not) and a licensed non-relative foster family home (see Appendix A to part 1355, section II, V.A). The options and definitions in the existing AFCARS provided us with limited analytical possibilities and did not adequately capture the specific foster family home in which the child is living. For example, we could not determine whether children were placed in pre-adoptive homes that were also relative homes. Further, we did not know the extent to which children were placed in licensed foster family homes. We believe that requiring the title IV–E agency to indicate separately all possible characteristics of a foster family home will allow us and title IV–E agencies to see the trends that may exist among foster homes, particularly now that we have added ''kin family foster care'' as an option. Commenters in response to the 2008 NPRM were generally supportive of the expanded list of proposed foster family home types. Each response option is discussed below.

(i) *Licensed home.* In paragraph (e)(3)(i), we propose that the title IV–E agency report whether each foster family home is licensed. We propose that ''licensed home'' be a separate response option so that we can clearly identify when a child is placed in any type of foster family home that is licensed or approved by the State or Tribal licensing/approval authority.

(ii) *Therapeutic foster family home.* In paragraph (e)(3)(ii), we propose that the title IV–E agency report whether the child is placed in a therapeutic foster family home. We propose to define ''therapeutic foster home'' as a foster family home that provides specialized care and services and is intended for children with more challenging behaviors or needs. Therapeutic foster homes are more prevalent today than when AFCARS was originally developed. Including this option is in line with our goal to more accurately reflect a child's living arrangements. Further, this option, along with the detailed information we will receive on the circumstances of the child's removal (in section 1355.43(d)(5)) and the child's health, behavioral or mental health conditions (in section 1355.43(b)(5)), will allow us to get a richer picture of the needs of children who are in out-of-home care.

(iii) *Shelter care foster family home.* In paragraph (e)(3)(iii), we propose that the title IV–E agency report whether the child is placed in a shelter care foster family home so that we can track the use of shelter care. We propose to define a ''shelter care foster family home'' as one that is designated or approved as a shelter care home by the State or Tribal licensing/approval authority, and is short-term or transitional in nature. We understand that shelter care is used to provide title IV–E agencies with an opportunity to assess a child's needs and future placements while providing care and protection for the child.

(iv) *Relative foster family home.* In paragraph (e)(3)(iv), we propose that the title IV–E agency report whether the child is placed in a relative foster family home where the relative foster parent(s) lives as his or her primary residence. We propose to retain the option of ''relative foster family home,'' currently included in the AFCARS regulation, to allow us to determine whether or not there is a familial relationship between the child and the foster parent(s). This option is consistent with our goal to better understand the relationship between a child in foster care and the child's caregivers. The option is limited to persons related by a biological, legal or marital connection and does not include kin (*e.g.,* individuals who have a pre-existing psychological, cultural or emotional relationship with the child), which is now proposed as a separate option.

(v) *Pre-adoptive home.* In paragraph (e)(3)(v), we propose that the title IV–E agency report whether the child is placed in a pre-adoptive home, defined as a home in which the family and the title IV–E agency have agreed on a plan to adopt the child. We believe that this definition is more precise than the current AFCARS definition of ''pre-adoptive home,'' which indicates that the family ''intends'' to adopt the child (see Appendix A to part 1355, section II.V). We believe that changing the definition to include title IV–E agency participation will convey concrete circumstances where the title IV–E agency and the foster family are working in concert to achieve permanency for the child through the foster family adopting the child.

(vi) *Kin foster family home.* In paragraph (e)(3)(vi), we propose that the title IV–E agency report whether the child is placed in a kin foster family home, defined as a home in which there is a kin relationship as defined by the title IV–E agency, such as one where a psychological, cultural or emotional relationship exists between the child or the child's family and the foster parent(s). This is a new response option. We understand that kin families have become important placement options for title IV–E agencies and we want to have a better understanding of how often this type of placement is used. We also added this option in response to comments to the 2008 NRPM requesting the inclusion of kin throughout the data elements, where applicable.

Other living arrangement type. In paragraph (e)(4), we propose to require the title IV–E agency to report whether a child is placed in one of thirteen living arrangements for a child who is not placed in a foster family home, as indicated in paragraph (e)(2) of this section. The proposed living arrangement types are mutually exclusive and are as follows: Group home-family-operated, group home-staff-operated, group home-shelter care, residential treatment center, child care institution, child care institution-shelter care, supervised independent living, juvenile justice facility, medical or rehabilitative facility, psychiatric hospital, runaway, whereabouts unknown and placed at home. We modified the proposed list of options from a similar list proposed in the 2008 NPRM. Our proposal expands the options that are in the existing AFCARS regulation and is modified from the 2008 NPRM proposed list of living arrangements. In the current placement setting data element in the existing AFCARS, the title IV–E agency can choose among five options related to placement settings other than foster family homes, which were designed to be mutually exclusive: Group home, institution (inclusive of child care institutions, residential treatment facilities, maternity homes, etc.), supervised independent living, runaway and trial home visit (see Appendix A to part 1355, section II, V.A). We have found that the current AFCARS living arrangement options do not represent adequately the various types of living arrangements in which a child may be living. Commenters in response to the 2008 NPRM were generally supportive of the expanded list of proposed other living arrangement types. Each response option is explained in detail below.

We propose to continue to include group homes as a type of living arrangement; however, as proposed in the 2008 NPRM, we propose to require

that the title IV–E agency report whether the group home is family operated or staff operated, or, regardless of who operates it, a shelter care group home. We propose to define ''group home-family operated'' as a group home setting that provides 24-hour care in a private family home where the family members are the primary caregivers. We propose to define ''group home-staff operated'' as one in which staff provides 24-hour care for children through shifts or rotating staff and is licensed or approved to provide shelter care by the State or Tribal licensing/approval authority. We propose to define a ''group home-shelter care'' as a group home that also provides 24-hour care for children, is short-term or transitional in nature and is licensed or approved to provide shelter care by the State or Tribal licensing/approval authority.

Determining whether a child is placed into a family operated or a staff operated group home will provide us with further insight into the child's living arrangement. In the existing AFCARS regulation, ''group home'' is defined as a small, licensed or approved home providing care in a group setting that generally has from seven to twelve children (see Appendix A to part 1355, section II, V.A). We have found that this definition is too limiting and does not reflect the actual group home living arrangements available to children. Therefore, our proposed definitions do not include a specific number of children who reside in the group setting. We do not believe it is necessary to determine whether shelter care group homes are operated by a staff or family.

We propose, as we did in the 2008 NPRM, to add ''residential treatment center'' as a type of living arrangement and define it as a facility that is for the purpose of treating children with mental health or behavioral conditions, including psychiatric residential treatment centers. In the existing AFCARS regulation, we direct agencies to report residential treatment facilities within the larger category of ''institutions,'' rather than as a separate option (see Appendix A to part 1355, section II, V.A). We propose to make this a separate and distinct option so that we may identify a child's living arrangement with more specificity and detail.

We propose, as we did in the 2008 NPRM, to identify ''child care institution'' as a separate living arrangement type. In the existing AFCARS, a living arrangement of a child care institution is included in the current AFCARS definition of ''institution,'' which is specific enough to depict accurately the type of living arrangements in which children reside (see Appendix A to part 1355, section II, V.A). We propose to define a ''child care institution'' as a private facility, or a public child care facility for no more than 25 children, which is licensed by the State or Tribal licensing/approval authority. We propose to exclude other institutions whose primary purpose is to secure children who are determined to be delinquent from the definition of a ''child care institution,'' such as detention facilities, forestry camps and training schools, consistent with section 472(c)(2) of the Act.

We propose to identify separately a child care institution that is designated by the State or Tribal licensing/approval authority as a shelter care facility. As in the 2008 NPRM, we propose this as a distinct option so that we can examine the use of shelter care as discussed previously.

We propose to retain the existing ''supervised independent living'' option in AFCARS but modify the definition to be consistent with the revised reporting population definition proposed in section 1355.41. In the existing AFCARS regulation, the definition of ''supervised independent living'' is an alternative transitional living arrangement where the child is under the supervision of the title IV–E agency, is receiving financial support from the child welfare agency and is in a setting which provides the opportunity for increased self care (see Appendix A to part 1355, section II, V.A). We propose to modify the definition for the ''supervised independent living'' option to require the title IV–E agency to report living arrangements where a child of any age is under the placement and care responsibility of the title IV–E agency and living independently in a supervised setting.

We propose, as we did in the 2008 NPRM, that the title IV–E agency indicate whether a child's living arrangement is a juvenile justice facility. We propose to define ''juvenile justice facility'' as a secure facility or institution where alleged or adjudicated juvenile delinquents are housed while under the title IV–E agency's placement and care responsibility. This definition is broad enough to include all types of juvenile facilities, whether they are locked or employ some type of treatment component.

We also propose, as we did in the 2008 NPRM, to add ''medical or rehabilitative facility'' as a new living arrangement type in AFCARS. We propose to define a ''medical or rehabilitative facility'' as one where a child receives medical or physical health care. This could include a hospital or facility where a child receives intensive physical therapy, but not primarily psychiatric care.

We propose that the title IV–E agency report whether a child is in a ''psychiatric hospital.'' We propose to define ''psychiatric hospital'' as one where the child receives emotional or psychological health care and is licensed or accredited as a hospital. This option is not currently included in the existing AFCARS regulation, and replaces the ''psychiatric facility'' option we proposed in the 2008 NPRM that included both psychiatric hospitals and residential treatment centers. We received comments to the 2008 NPRM seeking clarification on the definition of psychiatric facility and in response we modified the option to only include psychiatric hospitals that are licensed or accredited as a hospital. Psychiatric residential treatment centers should not be reported under this option. A child in a psychiatric residential treatment center should be included under the residential treatment center option.

We propose, as we did in the 2008 NPRM, to define the option of ''runaway'' as when the child has left, without authorization, the home or facility where the child was placed. The current living arrangement definition of runaway that is in the existing AFCARS refers to a child who has ''run away from the foster care setting'' (Appendix A to part 1355, section II.V). We propose to broaden the definition so that it is clear that this runaway option must be indicated any time a child has left a living arrangement without authorization.

We propose to add for the first time a new option of ''whereabouts unknown.'' We propose to define ''whereabouts unknown'' as when the child is under the title IV–E agency's placement and care responsibility, but is not in the physical custody of the title IV–E agency or person or institution with whom the child has been placed, the whereabouts of the child are unknown and the title IV–E agency does not consider the child to have run away. This is a new option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. We propose it now based on stakeholder feedback we received in response to the 2008 NPRM asking to add a separate option for a child whose whereabouts are unknown. With this new response option, ACF will be able to provide information on children who are in the title IV–E agency's placement and care responsibility but whose whereabouts are unknown.

Finally, we propose to add for the first time a new option of ''placed at home.''

We propose that the title IV–E agency indicate ''placed at home'' if the child is living at home with his or her parent(s) or legal guardian(s) while under the placement and care responsibility of the title IV–E agency in preparation for the title IV–E agency to return the child home permanently. This is a new option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. This option was added in response to comments to the 2008 NPRM expressing confusion between when a child is placed at home as defined above, a trial home visit and a visit home for a weekend or holiday. ''Placed at home'' should only be used in preparation for the child's permanent return home and should not be used if the child is at home for a weekend or holiday visit.

Private agency living arrangement. In paragraph (e)(5), we propose, as we did in the 2008 NPRM, to require the title IV–E agency to collect and report whether or not each of the child's living arrangements, reported in paragraph (e)(1), is licensed, managed or run by a private agency. This is the same proposal that we proposed for the first time in the 2008 NPRM. As title IV–E agencies increasingly use private agencies to perform a variety of child welfare services, there are important implications for the oversight of their responsibilities to children who are in out-of-home care. We have learned from the CFSRs and our National Quality Improvement Center on the Privatization of Child Welfare Services that title IV–E agencies have had varied levels of success with contracting out child welfare services to private agencies. We believe that by tracking the use of private agency involvement in a child's living arrangements, we may be able to analyze its impact on child outcomes. We received comments in support of this proposal in response to the 2008 NPRM.

Location of living arrangement. In paragraph (e)(6), we propose that the title IV–E agency report the general location of the child's living arrangement, specifically whether the child is placed within or outside of the reporting State or Tribal service area or outside of the country. If the child ran away or his or her whereabouts are unknown, the title IV–E agency must so indicate. This proposal is generally the same as that in the 2008 NPRM, which modified the current AFCARS requirement (see Appendix A to part 1355, section II, V.B) in which the title IV–E agency must indicate whether the child is placed outside of the State making the report. However we modified the proposal to include a child whose whereabouts are unknown in order to be consistent with the proposed out-of-home care reporting population and other data elements in paragraph (e) of this section. We also modified the options to include Tribal title IV–E agencies, in accordance with section 479B of the Act. We are required by statute at section 479(c)(3)(C)(iii) of the Act to collect the number and characteristics of children placed in foster care outside the State which has placement and care responsibility, and we hope to be able to explore the extent to which these placements occur, the reasons for these placements and to what extent they affect timely permanency for children. If the title IV–E agency indicates either ''out-of-State or out-of-Tribal service area'' or ''out-of-country'' for the child's living arrangement, the title IV–E agency must complete the data element in paragraph (e)(7); otherwise the title IV–E agency must leave it blank. We did not receive comments on this data element as proposed in the 2008 NPRM.

Jurisdiction or country where the child is living. In paragraph (e)(7), we propose to require the title IV–E agency to report the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for each living arrangement, if the title IV–E agency indicated either ''out-of-State or out-of-Tribal service area'' or ''out-of-country'' in paragraph (e)(6). This is a new data element not required to be reported in the existing AFCARS regulation and we first proposed it in the 2008 NPRM. In the 2008 NPRM, we proposed to require the title IV–E agency to report the two-digit FIPS code for the State or country. Commenters to the 2008 NPRM expressed concern with keeping up with ever-changing FIPS codes. We now modify the 2008 NPRM to remove FIPS codes, which are no longer being maintained and updated, and instead require that the title IV–E agency indicate the jurisdiction's or country's name for identification purposes which we believe will address commenter concerns. In addition, FIPS codes do not account for the breadth of jurisdictions that could be captured in this element, as it does not include non-Federal Tribes or other countries. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

We also believe that the information reported in this data element, in combination with the information reported in paragraph (e)(6), will provide information on the extent to which title IV–E agencies are maximizing all potential placement resources for children who are in out-of-home care. Our modified proposal also includes Tribal title IV–E agencies in accordance with section 479B of the Act.

Federal law is clear that delays in adoptive interjurisdictional placements are prohibited (section 471(a)(23) of the Act). Our analysis of existing AFCARS data demonstrates that it takes much longer to achieve permanency for children who are placed out-of-State compared to children whose placements are intrastate. We hope that expanding our collection of this information will support more sophisticated analyses of placements that are out of the State, Tribal service area or country. We also believe that requiring title IV–E agencies to identify the specific location of the child's placement that is out of the State, Tribal service area or country is consistent with the statutory requirement that a title IV–E agency have a State or Tribal wide information system from which the title IV–E agency can readily identify the location of a child in foster care, or who has been in foster care in the preceding 12 months (section 422(b)(8)(A)(i) of the Act).

In paragraphs (e)(8) through (e)(13), we propose to collect information on the child's siblings who are in out-of-home care under the placement and care responsibility of the title IV–E agency or who exit the placement and care responsibility of the title IV–E agency to a finalized adoption or legal guardianship. We propose two new data elements designed to obtain the total number of the child's siblings who are in out-of-home care under the placement and care responsibility of the title IV–E agency or who exit the placement and care responsibility of the title IV–E agency to a finalized adoption or legal guardianship and four new data elements where the title IV–E agency must report which siblings the child is placed with within the same living arrangement.

In the existing AFCARS, we do not have a way to know which children who are in out-of-home care are siblings and we do not have the ability to track whether siblings are placed together. We propose that the title IV–E agency report on a child's siblings in paragraphs (e)(8) through (e)(13) of this section in order to learn more about sibling group placement in out-of-home care, adoption and legal guardianship homes and to comply with the mandate in section 471(a)(31)(A) of the Act. Under this statutory provision, the title IV–E agency must make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship or adoptive placement,

unless such a placement is contrary to the safety or well-being of any of the siblings. We propose paragraphs (e)(8) and (e)(11) specifically to determine the total number of siblings which ACF will use to ensure correct data entry in paragraphs (e)(9), (e)(10), (e)(12) and (e)(13).

In the 2008 NPRM, we proposed to require title IV–E agencies to indicate the total number of siblings who are also in the title IV–E agency's placement and care responsibility and are placed with the child in the same living arrangement as of the last day of each of the child's living arrangements. Our 2008 NPRM proposal did not include reporting the child's siblings who exited the reporting title IV–E agency's placement and care responsibility to a finalized adoption or legal guardianship. Commenters to the 2008 NPRM supported our proposal to collect the total number of the child's siblings who are themselves in out-of-home care, but suggested that we also collect the child record numbers of the child's siblings, stating that it would be more useful to accurately track which children are siblings and whether they are placed together. We agreed with the commenters and revised our proposal accordingly. We also revised our proposal to include reporting whether the child has and lives with any siblings who exited the reporting title IV–E agency's placement and care responsibility to a finalized adoption or legal guardianship. We propose the new data elements in paragraphs (e)(8) through (e)(13) in order to learn more about sibling group placement.

Number of siblings in out-of-home care. In paragraph (e)(8), we propose to require the title IV–E agency to report the total number of siblings, if applicable, that a child has who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not include the child who is the subject of this record in the total number. If the child does not have siblings who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency during the report period, we propose that the title IV–E agency indicate ''0.'' If the child does not have any siblings, we propose that the title IV–E agency indicate ''not applicable.'' If the title IV–E agency indicates either ''0'' or ''not applicable,'' the title IV–E agency must leave the data elements in paragraphs (e)(9) and (e)(10) blank.

Siblings placed together in out-of-home care. In paragraph (e)(9), we propose to require the title IV–E agency to report the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child's living arrangement is in or out of the State or Tribal service area.

Siblings in out-of-home care not living with child. In paragraph (e)(10), we propose to require the title IV–E agency to report the child record number(s) of each sibling(s) who is in out-of-home care under the reporting title IV–E agency's placement and care responsibility and who is not placed with the child in the same living arrangement at any point during the report period. The title IV–E agency must not report the record number of the child who is the subject of this record. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must report this information whether the child's living arrangement is in or out of the State or Tribal service area.

Number of siblings in an adoption or legal guardianship. In paragraph (e)(11), we propose to require the title IV–E agency to report the total number of siblings, if applicable, that a child has who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not include the child who is the subject of this record in the total number. If the child does not have siblings who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship, we propose that the title IV–E agency indicate ''0.'' If the child does not have any siblings, we propose that the title IV–E agency indicate ''not applicable.'' If the title IV–E agency indicated either ''0'' or ''not applicable,'' the title IV–E agency must leave the data elements in paragraphs (e)(12) and (e)(13) blank.

Siblings in adoptive/guardianship placements living with child. In paragraph (e)(12), we propose to require the title IV–E agency to report the child record number(s) of each sibling(s) who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship and who is placed with the child in the same living arrangement at any point during the report period. For AFCARS purposes, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child's living arrangement is in or out of the State or Tribal service area.

Siblings in adoptive/guardianship placements not living with child. In paragraph (e)(13), we propose to require the title IV–E agency to report the child record number(s) of each sibling who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship and who is not living with the child in the same living arrangement at any point during the report period. This is a new element. As in previous sibling elements, for AFCARS purposes a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child's living arrangement is in or out of the State or Tribal service area.

Number of children living with the minor parent. In paragraph (e)(14), we propose to require the title IV–E agency to report the total number of children who are living with their minor parent in the same living arrangement, for each living arrangement if the title IV–E agency reported that the minor parent (*i.e.,* the child who is the subject of this record) has children in section 1355.43(b)(15). As in section 1355.43(b)(15), we propose to consider a child older than age 18 in foster care a ''minor parent'' if he or she has children. If the title IV–E agency reported ''0'' in section 1355.43(b)(15), the title IV–E agency must leave this data element blank. This data element is not in the existing AFCARS regulation and was first proposed in the 2008 NPRM. We propose that a title IV–E agency include in this count only those children of the minor parent who are not under the title IV–E agency's placement and care responsibility, for whom the minor parent is responsible and who are in the same living arrangement. The title IV–E agency must

not report those children of the minor parent who are in the out-of-home care reporting population as a result of a separate action removing the child from the minor parent and placing with the title IV–E agency. For example, if the minor parent is placed in a child care institution and the minor parent's infant child was removed from his or her care, the title IV–E agency has placement and care responsibility of the infant child and the title IV–E agency placed the infant child into a foster family home, then the title IV–E agency must report ''0'' for this data element. This is also the case if the minor parent is also placed in the same foster family home. The minor parent's child who is also in the placement and care responsibility of the title IV–E agency would have his or her own child record number.

We received comments in response to the 2008 NPRM recommending that title IV–E agencies report the child of a minor parent only if the minor parent's child is also in foster care. We considered the comments but did not make changes to this proposal because we want to know when a minor parent who is in out-of-home care is responsible for the care of his or her own child(ren) who is living with him or her. Minor parents and their children may differ from other children who are in out-of-home care and may require enhanced resources from the child welfare system, *e.g.,* possibly different permanency plans, living arrangements, lengths of stay in foster care, exit reasons and/or patterns of re-entry than other children in out-of-home care. We believe that it is necessary to examine the trends in these patterns so that policy is better informed and that the necessary resources can be made available to meet the needs of these families.

Marital status of the foster parents. In paragraph (e)(15), we propose to require the title IV–E agency continue to report information regarding the marital status of the foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act. Our proposal is unchanged from the 2008 NPRM. In the existing AFCARS, this data element is titled ''Foster Family Structure'' and the title IV–E agency must report one of four options married couple, unmarried couple, single male or single female (see Appendix A to part 1355, section II, IX.A). We propose, as we did in the 2008 NPRM, to include these same four marital status options, as well as one other category of marital status—separated. Additionally, we specify that the title IV–E agency must report this information for each foster family home in which the child is placed.

We propose to require the title IV–E agency to indicate ''married couple'' if the foster parents are considered to be united in matrimony according to applicable laws, including common law marriage where provided by applicable laws. We propose to require the title IV–E agency to indicate ''unmarried couple'' if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. We propose to require the title IV–E agency to indicate ''separated'' if the foster parent is legally separated, or living apart from his or her spouse, but remains legally married. We propose to require the title IV–E agency to indicate ''single female'' if the foster parent is a female who is not married (including common law marriage) and is not living with another individual as part of a couple. We propose to require the title IV–E agency to indicate ''single male'' if the foster parent is a male who is not married (including common law marriage) and is not living with another individual as part of a couple. If the title IV–E agency indicates the option ''married couple'' or ''unmarried couple,'' the title IV–E agency must complete the data elements for the second foster parent in paragraphs (e)(20) through (e)(22) of this section; otherwise the title IV–E agency must leave these data elements blank. Consistent with the existing AFCARS requirement and the 2008 NPRM proposal, we do not propose a separate category for a foster parent who is a widow or widower. Such individuals must continue to be reported according to his or her current marital/living situation.

Child's relationship to the foster parent(s). In paragraph (e)(16), we propose to require the title IV–E agency to report the type of relationship between the child and the foster parent(s) from one of seven options, for each foster family home in which the child is placed, as indicated in paragraph (e)(3) of this section. We propose to include the following relationship options, which we also proposed in the 2008 NPRM siblings, maternal and paternal grandparents, other maternal or paternal relatives or non-relatives. In addition to the options in the 2008 NPRM, we propose to add one additional option—kin. We agree with commenters to the 2008 NPRM who identified the importance of including this option in order to better understand the true nature of the child's out-of-home care experience. For AFCARS purposes, a kin relationship is defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s).

Title IV–E agencies are not currently required to report the specific type of relationship between the child and his or her foster parent(s). Through the information reported in the existing AFCARS, we only know whether a child is placed in a relative foster home, but we do not know the specific relative with whom the child is placed. We believe that it is essential to obtain this information, primarily so we can understand the trends surrounding relative, and particularly grandparent and paternal relative, care of children who enter foster care.

Year of birth of foster parent(s). In paragraphs (e)(17) and (e)(20), we propose to require the title IV–E agency to report the year of birth of each foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. A foster parent must be at least 18 years old. If the title IV–E agency indicated ''married couple'' or ''unmarried couple'' in paragraph (e)(15), the title IV–E agency must indicate the year of birth for the first foster parent in paragraph (e)(17) and the year of birth for the second foster parent in paragraph (e)(20). If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (e)(15), the title IV–E agency must indicate that person's year of birth in paragraph (e)(17) and leave paragraph (e)(20) blank. Our proposal is unchanged from the 2008 NPRM.

In the existing AFCARS regulation, the title IV–E agency is required to estimate a year of birth if the foster parent(s) exact birth date is unknown (see Appendix A to part 1355, section II, IX.B). We propose, as we did in the 2008 NPRM, to remove this instruction because we expect that the title IV–E agency will always have the exact year of birth for a foster parent. This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act.

Race of foster parent(s). In paragraphs (e)(18)(i) through (e)(18)(vii) and (e)(21)(i) through (e)(21)(vii), we propose to require the title IV–E agency to report the race of each foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. If the title IV–E agency indicated ''married couple'' or

''unmarried couple'' in paragraph (e)(15), the title IV–E agency must indicate the race for the first foster parent in paragraph (e)(18) and the race for the second foster parent in paragraph (e)(21). If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (e)(15), the title IV–E agency must indicate that person's race in paragraph (e)(18) and leave paragraph (e)(21) blank. This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act.

Our proposal is unchanged from the 2008 NPRM where we proposed to modify the existing AFCARS requirement (see Appendix A to part 1355, section II, IX.C) in order to be consistent with the OMB standards for collecting information on race. Currently in AFCARS, we explain that an individual's race is determined by how he or she defines him or herself or by how others define him or her. Consistent with the 2008 NPRM proposal, the title IV–E agency must allow the foster parent(s) to determine his or her own race. If the foster parent(s) does not know his or her race, the title IV–E agency must indicate that this information is not known (see paragraphs (e)(18)(vi) and (e)(21)(vi)). It is acceptable for the foster parent(s) to identify with more than one race, but not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that one of the races is not known. If the foster parent(s) declines to identify his or her race, the title IV–E agency must indicate that this information was declined (see paragraphs (e)(18)(vii) and (e)(21)(vii)).

Hispanic or Latino ethnicity of foster parent(s). In paragraphs (e)(19) and (e)(22), we propose that the title IV–E agency report the Hispanic or Latino ethnicity of the foster parent(s) by indicating ''yes'' or ''no.'' This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act. If the title IV–E agency indicated ''married couple'' or ''unmarried couple'' in paragraph (e)(15), the title IV–E agency must complete paragraph (e)(19) for the first foster parent and paragraph (e)(22) for the second foster parent. If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (e)(15), the title IV–E agency must complete paragraph (e)(19) for that person and leave paragraph (e)(22) blank.

Our proposal is the same as the existing AFCARS requirement (see Appendix B to part 1355, section II, VI.C), the 2008 NPRM and other sections of this proposed rule where demographic information on ethnicity is collected. The proposed data element is similar to one in the existing AFCARS requirements (see Appendix A to part 1355, section II, IX.C) and unchanged from the 2008 NPRM. Similar to the data elements on race in paragraphs (e)(18) and (e)(21), the definitions in paragraphs (e)(19) and (e)(22) also are consistent with the OMB race and ethnicity standards. Consistent with the 2008 NPRM proposal, the title IV–E agency must allow the foster parent(s) to determine his or her own ethnicity. If the foster parent(s) does not know his or her ethnicity, the title IV–E agency must indicate the option ''unknown.'' If the foster parent(s) refuses to identify his or her ethnicity, the title IV–E agency must indicate that the information was declined.

Sources of Federal assistance in living arrangement. In paragraph (e)(23), we propose to require the title IV–E agency to report the Federal assistance that supports the child's maintenance payments (*i.e.*, room and board) on the last day of the child's placement in each living arrangement or on the last day of the report period if the child's living arrangement is ongoing, for each living arrangement as indicated in paragraph (e)(1) of this section. Our proposal is a significant change from the existing AFCARS data element on financial assistance, which requires the title IV–E agency to report both Federal and non-Federal sources of assistance in each report period (see Appendix A to part 1355, section II, XI). Information similar to the existing AFCARS requirement is proposed to be collected in both paragraphs (b)(16) and (e)(23); however, we modified the options from the existing AFCARS requirement and we propose that the title IV–E agency report in paragraph (e)(23) only the sources of Federal assistance that support the child's maintenance. We propose, as we did in the 2008 NPRM, to require the title IV–E agency to report in paragraphs (e)(23)(i) through (e)(23)(viii) the types of Federal funds that are supporting the child's maintenance in each out-of-home care living arrangement from the following options title IV–E foster care maintenance payments, title IV–E adoption assistance subsidy, title IV–E guardianship assistance subsidy, title IV–A Temporary Assistance for Needy Families (TANF), title IV–B Child Welfare Services, title XX Social Services Block Grant (SSBG), the Chafee Foster Care Independence Program and/or other Federal funds.

We specified in paragraphs (e)(23)(i) through (e)(23)(iii) that the title IV–E agency must report a funding source of title IV–E foster care, title IV–E adoption subsidy, or a title IV–E guardianship subsidy when the child is eligible for such funds. ''Eligible'' means that the child satisfies fully all of the criteria for the title IV–E foster care maintenance payments program in section 472 of the Act (including requirements for a placement in a licensed or approved foster family home or child care institution or supervised independent living), for the adoption assistance program in section 473 of the Act (including requirements for the child to be placed in a pre-adoptive home with an adoption assistance agreement signed by all parties in effect), or for the guardianship assistance program in section 473 of the Act. We chose to specify that the child be eligible for such funds, rather than funds paid on behalf of the child because title IV–E agencies are reimbursed by the Federal government for allowable title IV–E foster care maintenance, adoption assistance, and guardianship assistance payments. Title IV–E agencies submit claims for their allowable costs after they have made payments on behalf of eligible children, sometimes months after the fact. The timing of reimbursement for title IV–E payments and submitting AFCARS data may be such that a child may not have actually received a Federal payment at the time that we are requesting such information but the child is eligible for a title IV–E foster care maintenance, adoption assistance, or guardianship assistance payment.

As in the 2008 NPRM, we tied the reporting of this information to a particular day within each living arrangement. If the child is placed in two different living arrangements within the same AFCARS report period, the title IV–E agency must report the Federal funds supporting the child's maintenance on the last day that the child was in the first living arrangement and, if the second living arrangement continues past the last date of the report period, the title IV–E agency must report the Federal funding sources on the last day of the report period. We propose to focus on the Federal funds provided on a particular day within a living arrangement so that we can better analyze the sources of Federal funds supporting children's maintenance. Finally, although some commenters to the 2008 NPRM suggested that collecting financial information was not necessary, we propose to collect this information because section 479(c)(3)(D)

of the Act requires that we collect the nature of Federal assistance.

Amount of payment. In paragraph (e)(24), we propose to require the title IV–E agency to report the total (title IV–E agency and Federal share) per diem amount of the title IV–E foster care maintenance payment, title IV–E adoption assistance subsidy or title IV–E guardianship assistance subsidy that the child is eligible for or is paid on behalf of a title IV–E eligible child on the last day of the living arrangement or the last day of the report period if the living arrangement is ongoing. We propose to require the title IV–E agency to report this information for each living arrangement in which the title IV–E agency indicated that paragraphs (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) ''applies.'' If the title IV–E agency indicated ''applies'' in paragraphs (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) and no payment was made, the title IV–E agency must indicate ''0'' for this data element.

Our proposal is unchanged from the 2008 NPRM but modifies the existing AFCARS regulation which requires title IV–E agencies to report the total amount of the monthly foster care payment, regardless of the source (*e.g.,* Federal, State, Tribal or another source of funds) in the existing AFCARS foster care data file and the total amount of the monthly adoption subsidy in the existing AFCARS adoption data file (see Appendix A to part 1355, section II, XII and Appendix B to part 1355, section II, VIII). As we proposed in the 2008 NPRM, we will no longer require the title IV–E agency to report the monthly amount of assistance, but rather the daily amount, as we will calculate the monthly amount based on the per diem rate that the title IV–E agency reports to us. This is the same proposal as in the 2008 NPRM, and we did not receive any comments critical of the change.

As we understand it, information systems are designed such that the daily rate is readily available for reporting. Therefore, this aspect of the proposal should be less of a burden on title IV–E agencies and in line with how their information systems are structured. We also propose to remove the requirement that is in the existing AFCARS for the title IV–E agency to report the amount of the payment only when a title IV–E payment is made on behalf of a child regardless of the source. We propose this change because we primarily are interested in knowing about the amount of funds under the title IV–E foster care and adoption assistance programs, since these are the two largest programs for which we have fiscal oversight responsibility.

Services provided in other living arrangements. In paragraph (e)(25), we propose to require the title IV–E agency to report the type of services a child is receiving if placed in a living arrangement other than a foster family home as indicated in paragraph (e)(4). Pub. L. 113–183 requires this information be reported as part of the annual Child Welfare Outcomes Report per section 479A of the Act. Specifically, the law requires the reporting of information in areas such as specialized education, treatment, and counseling, as well as other services that do not fit into these categories, *e.g.*, independent living skills or other services towards adult preparedness. If the title IV–E agency indicated in paragraph (e)(2) that the child is living in a foster family home, leave this data element blank. If there are services provided, the title IV–E agency must indicate ''yes'' in paragraph (e)(25) and then indicate whether each paragraphs (e)(25)(i) through (e)(25)(iv) ''applies'' or does not apply.'' If there are no services provided by the agency setting, the title IV–E agency must indicate ''no.''

Finally, we would like to note that we are not continuing our proposal from the 2008 NPRM to include the data elements ''language of foster parent(s)'' and ''language preference of foster parent'' due to strong opposition in public comments to the 2008 NPRM.

Section 1355.43(f) Permanency Planning

In paragraph (f), we propose that the title IV–E agency collect and report information related to permanency planning for children in foster care. In general, we propose to expand the information that we collect by requiring title IV–E agencies to report longitudinal information for most of the data elements in paragraph (f). We also propose to modify the permanency plan options and request new information on the reasons for changing the child's permanency plan; the child's concurrent permanency plan; the child's juvenile justice involvement; caseworker visits with the child and the child's transition plan. In the existing AFCARS, the title IV–E agency is required to report one data element on the child's most recent case plan goal, which does not provide any detailed information about permanency planning for children in foster care. We propose eleven additional data elements that will enhance our analysis of the child's entire out-of-home care experience and will better inform the title IV–E agency's performance in permanency planning and achieving positive outcomes for children in foster care. We also believe that collecting this additional information will enhance our data analysis for the CFSRs or other Federal monitoring efforts. We propose to update the language from the existing AFCARS regulation to use the term ''permanency plan'' instead of the term ''case plan,'' which is primarily a name change consistent with the terminology used throughout titles IV–B and IV–E of the Act. We used the term ''permanency plan'' in the 2008 NPRM and 2010 FR Notice and did not receive any comments.

Some aspects of our proposal are different from the 2008 NPRM and the existing AFCARS regulation. One difference is that we do not propose to collect ongoing child and family circumstances at the development of the initial permanency plan and at the time of each permanency hearing, or annually. In the 2008 NPRM, we proposed a list of ongoing child and family circumstances identical to the expanded list of circumstances proposed in paragraph (d). Commenters to the 2008 NPRM and 2010 FR Notice were overwhelmingly opposed to our proposal to collect child and family circumstances at any point after the child's removal (see section 1355.43(d)). Primarily, the commenters questioned the value of collecting such information after the time of the child's removal and strongly felt that the burden associated with making such vast programmatic changes and the time for workers to input such data would not positively impact the outcomes for children in foster care. Thus, based on such opposition in the comments, we decided against a proposal to collect ongoing information on child and family circumstances after the time of the child's removal. We propose instead to collect information on the reasons the child's permanency plan may change, which we explain further in paragraph (f)(4).

Permanency plan. In paragraph (f)(1), we propose to require the title IV–E agency to report the type of permanency plan established for the child, for each permanency plan that is established for the child in every out-of-home care episode. This is a longitudinal element. In the existing AFCARS, the title IV–E agency is required to report the child's ''most recent case plan goal'' from a list of seven options, reunify with parents or principal caretaker; live with other relatives; adoption; long-term foster care; emancipation; guardianship; and not yet established (see Appendix A to part 1355, section II, VI). The options in the existing AFCARS are similar to the response options we proposed in the 2008 NPRM, which were reunify with parents or legal guardians; live with

other relatives; adoption; planned permanent living arrangement; independent living; relative guardianship; non-relative guardianship; and if the child's permanency plan is not established. Based on the comments we received in response to the 2008 NPRM and the 2010 FR Notice we propose to modify the 2008 NPRM proposal on permanency plan options. Although Federal regulations (45 CFR 1356.21(g)) require title IV–E agencies to develop permanency plans for children in foster care consistent with the program definition, we understand that most title IV–E agencies regularly develop and update permanency plans consistent with good practice. We propose that the title IV–E agency report this information for all children in the out-of-home care reporting population if that information has been collected in accordance with best practices procedures. In paragraph (f)(1), we propose to require the title IV–E agency to report one of six permanency plan options for the child or indicate that the permanency plan is not established. A description of each permanency plan option follows.

We propose that the title IV–E agency indicate ''reunify with parent(s) or legal guardian(s)'' if the plan is to keep the child in out-of-home care for a limited time and the title IV–E agency is working with the child's family to reunify the child with the parent(s) or legal guardian(s) in a stable family environment. Our proposed definition for this permanency plan option is the same as the 2008 NPRM, wherein we explained that we modified the existing AFCARS definition to replace the term ''principal caretaker'' with ''legal guardian.'' We are expanding the ''reunify with parent(s) or legal guardian(s)'' option to include situations when the child reunifies with a non-custodial parent or legal guardian, rather than the parent or legal guardian from whom the child was removed.

We propose to require the title IV–E agency to indicate ''live with other relatives'' if the title IV–E agency is working towards the child living permanently with a relative(s), other than the child's parent(s) or legal guardian(s). Our proposal differs from the existing AFCARS definition in that we propose to exclude relative guardianship from the definition and remove the instruction that the relatives are ''other than the ones from whom the child was removed.'' This instruction is unnecessary given the changes to the ''reunify with parent(s) or legal guardian(s)''option because we are no longer limiting the ''reunify with parent(s) or legal guardian(s)'' option to the person(s) from whom the child was removed. Our current proposal is the same as in the 2008 NPRM and we did not receive comments on this permanency plan option.

We propose to require the title IV–E agency to indicate ''adoption'' if the plan is to facilitate the child's adoption by the child's relatives, foster parent(s), kin or other unrelated individuals. Our proposal differs from the existing AFCARS requirement and the 2008 NPRM in that we propose to modify the adoption permanency plan option definition to specifically include adoption by kin. Commenters to the 2008 NPRM requested the addition of kin in a number of data elements in AFCARS and therefore we include it here.

We propose to require the title IV–E agency to indicate ''guardianship'' if the plan is for the title IV–E agency to establish a new legal guardianship arrangement for the child. This includes legal guardianships established with a relative or a non-relative. We propose to modify the existing AFCARS definition and the 2008 NPRM proposal based on the 2008 NPRM comments. In the existing AFCARS, the permanency plan option of ''guardianship'' applies to non-relatives whereas relative guardianship is included in the definition of ''live with other relatives.'' In the 2008 NPRM, we proposed separate response options for relative and non-relative guardianship permanency plans. Commenters to the 2008 NPRM requested that we combine the ''relative guardianship'' and ''non-relative guardianship'' permanency plan options because they stated that it would be burdensome to reprogram information systems to comply with this and did not see the value of making such a distinction in AFCARS. We agreed and now propose one response option to capture the child's permanency plan of legal guardianship.

We propose to require the title IV–E agency to indicate ''planned permanent living arrangement'' if the plan is for the child to remain in foster care until the title IV–E agency's placement and care responsibility ends. The title IV–E agency must only select ''planned permanent living arrangement'' consistent with the requirements in section 475(5)(C)(i) of the Act. This response option is not in the existing AFCARS and we are modifying our 2008 NPRM proposal. In the 2008 NPRM, we proposed two response options, ''planned permanent living arrangement'' and ''independent living'' to replace the response options in the existing AFCARS ''long term foster care'' and ''emancipation'', respectively. Both ''long term foster care'' and ''emancipation'' in the existing regulations encompass children with a plan to remain in foster care until emancipation.

Over the years, States have sought out technical assistance and guidance on how to distinguish between the two response options. In the 2008 NPRM, we attempted to rectify this issue by renaming the existing AFCARS response option ''long term foster care'' as ''planned permanent living arrangement'' and replacing ''emancipation'' with a new response option of ''independent living'' defined as situations when the plan was for the child to live independently and the child was receiving or eligible to receive independent living services. Commenters to the 2008 NPRM and 2010 FR Notice supported our proposal to include a response option for ''planned permanent living arrangement'' but felt that this was more than a name change and requested that we modify the definition to be more consistent with practice in the field. Commenters to the 2008 NPRM were overwhelmingly opposed to our proposal to include ''independent living'' as a permanency plan, stating that in practice, ''independent living'' refers to services that are provided to children who may emancipate from foster care and that these services should be provided no matter what the child's permanency plan is. We reexamined the existing response options in AFCARS and those proposed in the 2008 NPRM in the context of these comments, practice in the field and the statutory requirement at section 475(5)(C)(i) of the Act. Section 475(5)(C)(i) requires that the title IV–E agency rule out reunification, adoption and legal guardianship before selecting a permanency plan for a planned permanent living arrangement. We understand that in practice, when a child's plan is not to return to his or her family, or achieve guardianship or adoption, the title IV–E agency attempts to place a child with a committed foster care provider and provide the child with the skills needed for independence. The child may be placed with someone who has made a formal commitment to the child and may receive the services or not based on a variety of factors. Therefore, we believe that other monitoring efforts that examine casework, such as the current CFSR, are better tools in which to measure title IV–E agency performance in permanency planning for children who may emancipate from foster care. We believe that our current proposal

addresses the comments to the 2008 NPRM and the 2010 FR Notice and overall better reflect current practice. We welcome comments on this response option.

Finally, we propose to require the title IV–E agency to report if the child's permanency plan is not yet established. Our proposal is the same as in the 2008 NPRM, which is only a name-change modification from the existing AFCARS response option titled ''case plan goal not yet established.'' We did not receive comments in response to the 2008 NPRM on this response option.

Date of permanency plan. In paragraph (f)(2), we propose to require the title IV–E agency to report the month, day and year that each permanency plan for the child was established, for each permanency plan established in paragraph (f)(1). This was a new proposed data element in the 2008 NPRM and we did not change it in our proposal here. We received very few comments on this data element in response to the 2008 NPRM and the ones we received stated that the additional workload may outweigh the value of the data element. As we stated in the 2008 NPRM, we continue to believe that collecting the date each permanency plan was established will allow us to know all the permanency plans that were established for the child and when they were established.

Concurrent permanency planning. In paragraph (f)(3), we propose to require the title IV–E agency to indicate whether the title IV–E agency identified a concurrent permanency plan for the child. Our proposal is unchanged from the 2008 NPRM. We propose that the title IV–E agency indicate ''concurrent permanency plan'' if a concurrent permanency plan exists for the child; ''no concurrent permanency plan'' if the title IV–E agency engages in concurrent permanency planning but a plan does not exist for the child; or ''not applicable'' if the title IV–E agency does not engage in concurrent permanency planning. If the title IV–E agency indicates ''concurrent permanency plan,'' the title IV–E agency must complete the data elements in paragraphs (f)(3)(i) and (f)(3)(ii) to indicate the type of concurrent permanency plan; otherwise the title IV–E agency must leave these data elements blank.

The title IV–E agency is not required to report information on concurrent permanency planning in the existing AFCARS. Requiring information on concurrent permanency planning was a new proposal in the 2008 NPRM and we received many comments in response to this proposal and the 2010 FR Notice. Some commenters to both the 2008 NPRM and 2010 FR Notice supported our proposal stating that it would help to comprehensively understand the permanency planning that is done for a child. Other commenters to both the 2008 NPRM and 2010 FR Notice questioned the value of the information and objected to requiring this information citing worker burden and noting that CFSR results indicate concurrent permanency planning was linked to positive results in only a few States. We considered the comments, but we did not make changes. Concurrent permanency planning has been encouraged since the passage of the Adoption and Safe Families Act (ASFA) in 1997 and we understand from the CFSRs that many States engage in concurrent permanency planning although we also recognize that it is not implemented on a consistent basis. We note that there are different ways to view and utilize concurrent permanency planning and we believe that it is important to capture the extent to which children have concurrent permanency plans so that we can better understand if, when and how concurrent permanency planning is used.

Concurrent permanency plan. In paragraph (f)(3)(i), we propose to require the title IV–E agency to identify the concurrent permanency plan that is established for the child, if applicable. We propose that the concurrent permanency plan options include: ''Live with other relatives,'' ''adoption,'' ''guardianship,'' and ''planned permanent living arrangement,'' and use the same definitions as in paragraph (f)(1). We do not propose including the option ''reunify with parent(s) or legal guardian(s)'' because a concurrent plan is usually associated with a permanency plan for reunification, so we do not see the value in including it here. We did not receive comments on this data element in response to the 2008 NPRM. We modified the 2008 NPRM proposal on concurrent permanency plan options to match paragraph (f)(3)(i) and (f)(1). No other changes were made to this data element from the 2008 NPRM.

Date of concurrent permanency plan. In paragraph (f)(3)(ii), we propose that the title IV–E agency report the month, day and year that each concurrent permanency plan, if any as indicated in paragraph (f)(3), was established for the child. This was a new proposed data element in the 2008 NPRM, which we did not change in this proposal. We did not receive comments on this data element in response to the 2008 NPRM.

Reason for permanency plan change. In paragraph (f)(4), we propose to require that the title IV–E agency indicate whether the child's permanency plan changed during the report period and if so, the reason(s) for the child's permanency plan change from a list of eight options. This is a new data element. We propose that the title IV–E agency indicate ''yes'' if the child's permanency plan changed during the report period and ''no'' if the child's permanency plan did not change. If the title IV–E agency indicates ''yes,'' the title IV–E agency must indicate in paragraphs (f)(4)(i) through (f)(4)(viii) whether each reason ''applies'' or ''does not apply'' for the change in the child's permanency plan as indicated in paragraph (f)(1).

We propose this data element instead of continuing our proposal from the 2008 NPRM to collect additional information on ongoing child and family circumstances, which was overwhelmingly opposed in the comments to the 2008 NPRM and 2010 FR Notice. Permanency plans may or may not change throughout a child's duration in foster care; however, knowing the reasons for changes in the child's permanency plan will give us a more comprehensive understanding of the permanency planning that is done for a child in out-of-home care. We explain the response options for this data element in paragraphs (f)(4)(i) through (f)(4)(viii). Stakeholders provided suggestions for reasons that a child's permanency plan may change which we incorporated into the response options below. We welcome comments on these reasons for a permanency plan change.

(i) *Not engaged in services.* In paragraph (f)(4)(i), we propose that the title IV–E agency indicate if the child's parent(s) or legal guardian(s) has not engaged in services or otherwise taken the steps necessary to reunify with the child as the reason for the permanency plan change. This may include a determination by the title IV–E agency or the court that the parent(s) or legal guardian(s) is not following the steps of the case plan or that the parent(s) or legal guardian(s) are not making efforts to reunify with the child.

(ii) *Lack of progress in reunification plan.* In paragraph (f)(4)(ii), we propose that the title IV–E agency indicate if the child's parent(s) or legal guardian(s) is not meeting the requirements of the case plan for reunification consistently by demonstrating needed changes to provide a safe family home for the child or otherwise taking the steps necessary to reunify with the child. This may also mean that the parent(s) or legal guardian(s) is making only minimal efforts toward reunification. We propose this response option to distinguish

between instances where the title IV–E agency changes the child's permanency plan because the parent(s) or legal guardian(s) is making some efforts to reunify with the child from instances when the parent(s) or legal guardian(s) has not made any efforts to reunify with the child. Comments in response to the 2010 FR Notice were supportive of collecting whether the child's permanency plan changes were due to the lack of progress by child's parent(s) or legal guardian(s) in meeting the requirements of the case plan.

(iii) *Unable/incapable of caring for child permanently.* In paragraph (f)(4)(iii),we propose that the title IV–E agency indicate if the change in the child's permanency plan is due to the fact that the child's parent(s) or legal guardian(s) is unable or incapable of caring for the child due to a permanent, long-term or other extenuating circumstance. This includes situations where the parent(s) or legal guardian(s) abandoned the child; died; is incarcerated for an amount of time for which the title IV–E agency determines that the child remaining in foster care is not in the child's best interests; has had his or her parental rights terminated or legal guardianship dissolved; or there is another extenuating circumstance as defined by the title IV–E agency. These reasons are not finite; however, we expect that the title IV–E agency will indicate this response option when there is truly an extenuating circumstance that is the reason for the change in the child's permanency plan. We propose this response option to distinguish between when the child's parent(s) or legal guardian(s) is not consistently engaging in services to reunify with the child (described previously in paragraphs (i) and (ii)) from instances when the child's parent(s) or legal guardian(s) is unable or incapable of caring permanently for the child.

(iv) *Reunification appropriate.* In paragraph (f)(4)(iv), we propose that the title IV–E agency indicate if the reason for the change in the child's permanency plan is due to a decision that the child's parent(s) or legal guardian(s) is able to care permanently and safely for the child and the title IV–E agency is planning on pursuing reunification as a permanency option. This includes instances where reunification with a non-custodial parent is determined appropriate for the child. This decision may be made by the title IV–E agency or ordered by the court. We propose this response option to account for instances where the title IV–E agency changes the child's permanency plan to reunification because a non-custodial parent or legal guardian comes forward or instances where the change is made because the parent(s) or legal guardian(s) make significant strides in meeting the requirements of the case plan, if he or she previously did not do so.

(v) *Child preference.* In paragraph (f)(4)(v), we propose that the title IV–E agency indicate if an older child stated his or her preference for the change in the permanency plan. We propose this response option to account for instances where the title IV–E agency considers the child's preference when changing the permanency plan, rather than inaction or inability on the part of the parent(s) or legal guardian(s) to meet the case plan requirements.

(vi) *Adoption/guardianship appropriate.* In paragraph (f)(4)(vi), we propose that the title IV–E agency indicate if the reason for the change in the permanency plan is due to a decision that adoption or legal guardianship is a more appropriate plan. This decision may be made by the title IV–E agency or ordered by the court. We propose this response option because it indicates a specific plan change.

(vii) *Current foster care provider committed to permanency.* In paragraph (f)(4)(vii), we propose that the title IV–E agency indicate if the reason for changing the permanency plan is because the current foster care provider of the child expressed a commitment to care permanently for the child and the permanency plan of adoption, legal guardianship or a planned permanent living arrangement has been ruled out by the title IV–E agency.

(viii) *Emancipation likely.* In paragraph (f)(4)(viii), we propose that the title IV–E agency indicate if the reason for the change in the permanency plan is due to a decision that reunification, adoption or guardianship are not an appropriate permanency plans and have been ruled out. We propose this response option in order to analyze the frequency with which permanency plans are changed for this reason.

Date of periodic review. In paragraph (f)(5), we propose to require the title IV–E agency to report the month, day and year of each of the child's periodic reviews, as required by section 475(5)(B) of the Act. The periodic review may be completed by either a court or administrative review, as permitted in section 475(6) of the Act. Our proposal is similar to the existing AFCARS requirement and the 2008 NPRM proposal. In the existing AFCARS, the title IV–E agency is required to report the child's most recent periodic review conducted by an administrative body or a court (see Appendix A to part 1355, section II, I.E). In the 2008 NPRM, we proposed to require the title IV–E agency to report the dates of each periodic review or permanency hearing. We did not receive comments in response to the 2008 NPRM proposal. We propose to modify the 2008 NPRM proposal to collect separately the dates of the child's periodic reviews in paragraph (f)(5) and the dates of the child's permanency hearings in paragraph (f)(6) to improve the information that we have available for the CFSRs or other monitoring efforts.

Date of permanency hearing. In paragraph (f)(6), we propose to require the title IV–E agency to report the month, day and year of each of the child's permanency hearings held by a court or an administrative body appointed or approved by the court, as required by section 475(5)(C) of the Act. This is a new data element. Currently the title IV–E agency reports this information in the existing AFCARS in the same data element as the date for the periodic reviews (see Appendix A to part 1355, section II, I.E). As indicated above, in order to enhance the data available to understand compliance with Federal requirements for the case review system in section 475(5)(C) of the Act, we propose to separately collect the dates of each periodic review in paragraph (f)(5) and each permanency hearing in paragraph (f)(6) for a child.

Juvenile justice. In paragraph (f)(7), we propose to require the title IV–E agency to indicate if the child was found by a juvenile judge or court to be a status offender or adjudicated delinquent at any time during the report period. We propose that the title IV–E agency indicate ''not applicable'' if the child was not found to be a status offender or adjudicated delinquent at any time during the report period. We propose that the title IV–E agency indicate ''status offender'' if the child is found to be a status offender during the report period. A status offense is specific to juveniles and may include truancy, running away or underage alcohol violations. We propose that the title IV–E agency indicate ''adjudicated delinquent'' if the child is adjudicated to be delinquent during the report period. We propose that the title IV–E agency indicate ''both status offender and delinquent'' if the child is found to be both a status offender and adjudicated delinquent at any time during the report period.

This information is not currently collected and reported in AFCARS; therefore we currently do not have a way of identifying children who are

involved in the juvenile justice system. In the 2008 NPRM we proposed new data elements in the removal information section and in the permanency planning section, in order to begin capturing this information. As discussed in paragraph (d), in the 2008 NPRM we proposed to require the title IV–E agency to report whether the child was involved in the juvenile justice system at the time of the child's removal. We also proposed in the 2008 NPRM to collect information in paragraph (f) on the child's juvenile justice involvement, including the child's alleged offenses and delinquencies. We believe that it is important to understand more about children in foster care who are also involved in the juvenile justice system and we would also like to have the ability to analyze the overlap between the juvenile justice and child welfare systems. We received many supportive comments to the 2008 NPRM to require reporting information on a child's juvenile justice involvement, but commenters expressed concern in reporting alleged offenses and delinquencies stating that it could provide misleading data. We understand the concern and have modified our proposal to require that the title IV–E agency report the child's involvement with the juvenile justice system only if a judge or court found the child to be a status offender or delinquent.

In paragraphs (f)(8) through (f)(11), we propose for the first time to require the title IV–E agency to collect and report in AFCARS information on visits between the child and the child's caseworker. We propose to require the title IV–E agency to collect and report the date, location and purpose of each visit by the caseworker and whether or not the caseworker visited the child alone during each visit, for each visit during each out-of-home care episode. Currently, States and Indian Tribes, Tribal organizations or consortia that operate title IV–B, subpart 1 programs are required under section 422(b)(17) of the Act to describe their standards for ensuring monthly caseworker visits with children in foster care. Section 422(b)(17) of the Act requires caseworker visits to occur monthly and the visits to be well-planned and focus on issues pertaining to case planning and service delivery. In addition, section 424(f) of the Act requires States to submit information on the number of visits made by caseworkers on a monthly basis to children in foster care and the number of the visits that occurred in the residence of the child. This information is reported in the APSR.

While States report information on caseworker visits, this information is not available in a quantitative database format nor do States report on the purpose or specific location of the visits. We believe that it is important to capture information on caseworker visits in a systematic way so that we may improve the quality of data analyses and we believe that AFCARS is an appropriate vehicle through which to collect this information. We propose to require the title IV–E agency to report the date and location of each visit, so that we will be able to measure with more accuracy whether the title IV–E agency is meeting the monthly caseworker visit requirement of sections 422(b)(17) and 424(f) of the Act (see paragraphs (f)(8) and (f)(9) respectively). We propose to require the title IV–E agency to report the purpose of each caseworker visit to distinguish true caseworker visits from other visits with the child. Further, we propose to require the title IV–E agency report separately whether the caseworker visited the child alone at any time during the visit as one avenue to assess the safety of the child (see paragraphs (f)(10) and (f)(11) respectively). We believe that collecting caseworker visit information in AFCARS will better inform the data that we could use in the CFSRs or other Federal monitoring efforts because we will be able to collect information at the case level, rather than in aggregate per the current CFSP/APSR reporting method. However, we believe that reporting caseworker visit information in AFCARS will be less of a burden on title IV–E agencies because many title IV–E agencies will be able to pull the information directly from their SACWIS or other information systems. Each data element is described below in paragraphs (f)(8) through (f)(11).

Caseworker visit dates. In paragraph (f)(8), we propose to require the title IV–E agency to indicate the month, day and year of each in-person, face-to-face visit between the child and the caseworker, for each visit. The caseworker may be any caseworker to whom the title IV–E agency has assigned or contracted case management or visitation responsibilities (see section 7.3 of the CWPM, Question and Answer #5). This proposal will allow us to measure the frequency of caseworker visits and whether the visits occur on a monthly basis, as required by section 422(b)(17) of the Act.

Caseworker visit location. In paragraph (f)(9), we propose to require the title IV–E agency to indicate one of two options regarding the location of each in-person, face-to-face visit between the caseworker and the child, for each visit. We propose that the title IV–E agency indicate ''child's residence'' if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. We propose that the title IV–E agency indicate ''other location'' if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community. This proposal will allow us to determine how many of the visits occur in the residence of the child, per section 424(f)(2) of the Act.

Caseworker visit purpose. In paragraph (f)(10), we propose to require the title IV–E agency to indicate the primary purpose of each in-person, face-to-face visit between the caseworker and the child, for each visit, from four options. We propose that the title IV–E agency indicate ''assessment or case planning'' if the purpose of the visit was to assess the child's situation, whether or not through a formal assessment, or if the purpose was to conduct other case planning activities for the child's safety, permanency or well-being. We propose that the title IV–E agency indicate ''placement of the child'' if the purpose of the visit was to place the child in foster care or another setting. We propose that the title IV–E agency indicate ''transportation'' if the purpose of the visit was to transport the child to a visit or appointment. We propose that the title IV–E agency indicate ''court hearing'' if the purpose of the visit was to attend a court hearing related to the child's case.

We propose that these response options be mutually exclusive. If the caseworker visits with the child are for more than one purpose, the title IV–E agency must indicate the primary purpose of the visit, as determined by the title IV–E agency. Title IV–E agencies are not required currently to report for the CFSP/APSR on the purpose of the visits or the activities that are carried out during the visits. We propose to require the title IV–E agency to report in paragraph (f)(10) the primary purpose of the visit between the caseworker and the child to measure whether the visits are focused on issues pertinent to case planning and service delivery, per section 422(b)(17) of the Act.

Caseworker visit alone with child. In paragraph (f)(11), we propose to require the title IV–E agency to indicate if the caseworker visited the child alone at any time during each in-person, face-to-face visit with the child. The caseworker

does not have to visit alone with the child for the entire visit. If the caseworker visited alone with the child at any point during the visit, we propose that the title IV–E agency indicate ''yes.'' If the caseworker did not visit with the child alone at all, we propose the title IV–E agency indicate ''no.'' We propose to require the title IV–E agency to report this information to provide a fuller picture of the visits and this data will help support the information that can be used for the CFSR.

Transition plan. In paragraph (f)(12), we propose for the first time to require the title IV–E agency to indicate whether or not the child has a transition plan that meets the requirements of section 475(5)(H) of the Act, by indicating ''yes,'' ''no'' or ''not applicable'' as appropriate. The title IV–E agency must indicate ''not applicable'' for a child who does not have a transition plan because he or she has not yet reached the 90-day timeframe for transition plan development prescribed in section 475(5)(H) of the Act. If the title IV–E agency indicates ''yes,'' the title IV–E agency must indicate whether each provision in paragraphs (f)(12)(i) through (f)(12)(vi) is included in the transition plan, by indicating that the provision either ''applies'' or ''does not apply.'' The information in paragraphs (f)(12)(i) through (f)(12)(vi) is based on the information that statutorily is required to be in the child's transition plan in section 475(5)(H) of the Act.

Section 475(5)(H) of the Act requires that the transition plan be personalized at the direction of the child and be developed during the 90-day period prior to the date on which the child attains age 18, or if applicable, during the 90-day period before the later age for a child in extended foster care elected by the title IV–E agency per section 475(8)(B) of the Act. We propose that the title IV–E agency indicate in paragraphs (f)(12)(i) through (f)(12)(vi) whether each option of ''Housing,'' ''Health insurance,'' ''Health care treatment decisions,'' ''Education,'' ''Mentoring and continuing support'' and ''Work force support and employment services'' is included in the child's transition plan, as required in section 475(5)(H) of the Act. We propose this data element so that we can discern the planning that takes place for older children who are in foster care and the impact transition planning has on a child's stay in foster care. We welcome comments on this proposal.

Date of transition plan. In paragraph (f)(13), we propose for the first time to require the title IV–E agency to indicate the date of the child's transition plan, if the title IV–E agency indicated that the child had a transition plan that meets the requirements of section 475(5)(H) of the Act in paragraph (f)(12). We seek this information so that we will be able to measure whether the title IV–E agency is meeting the requirement in section 475(5)(H) of the Act to develop a transition plan for a child during the 90-day period prior to the date on which the child attains age 18. We welcome comments on this proposal.

Section 1355.43(g) General Exit Information

In paragraph (g), we propose to require the title IV–E agency to report information that describes when and why a child exits the out-of-home care reporting population. The title IV–E agency is currently required to report the child's most recent date of discharge and discharge reason in the existing AFCARS (see Appendix A to part 1355, section II, X). We retain the current AFCARS requirements, with some modifications. First, we propose to modify the language from the existing AFCARS regulation to refer to the child's ''exit'' from out-of-home care, instead of referring to the child's ''discharge.'' We believe that ''exit'' is a more accurate description when referring to a child's out-of-home care episode and understand that this term is consistent with current practice in the field. We used the term ''exit'' in the 2008 NPRM and 2010 FR Notice and did not receive comments on this. Second, as in the 2008 NPRM, we propose to require the title IV–E agency to report longitudinal information for all of the data elements in paragraph (g). Our current proposal in paragraph (g) is similar to our proposal in the 2008 NPRM; however, we made some modifications based on comments to the 2008 NPRM and 2010 FR Notice. We explain the changes in greater detail below.

Date of exit. In paragraph (g)(1), we propose to require the title IV–E agency to report the month, day and year for each of the child's exits from out-of-home care, if applicable. An exit occurs when the title IV–E agency's placement and care responsibility for the child ends. If the child has not exited the out-of-home care reporting population, the title IV–E agency must leave this data element blank. If this data element is applicable, the data elements in paragraphs (g)(2) and (g)(3) of this section must have a response.

This proposal differs from the existing AFCARS regulation in which we require that the title IV–E agency report only the child's most recent ''date of discharge from foster care'' (see Appendix A to part 1355, section II, X.A). We are continuing our 2008 NPRM proposal to require that the title IV–E agency collect and report each of the child's exit dates, if the child has multiple out-of-home care episodes.

An important aspect of our proposal that is different from existing AFCARS regulations and 2008 NPRM is the point at which we consider the child to have exited the out-of-home care reporting population. Existing AFCARS regulation and policy guidance is that if there is no specified period of time related to how long the child can remain home under the agency's responsibility for placement and care, then the agency reports the child as discharged if the length of stay is six months. In the 2008 NPRM, we proposed that an exit occurs when the title IV–E agency's placement and care responsibility for the child ends, the title IV–E agency has returned the child home, or the child reaches the age of majority and is not receiving title IV–E foster care maintenance payments. Commenters to the 2008 NPRM believed that the child should not exit the out-of-home care reporting population while the title IV–E agency has placement and care responsibility of the child. We were convinced by the overwhelming comments to simplify the definition of exit. We also explained in section 1355.41(a) that we are not continuing our proposal from the 2008 NPRM to report instances where the child is placed at home while still under the title IV–E agency's placement and care responsibility as an exit because commenters to the 2008 NPRM were overwhelmingly opposed to this proposal.

Exit transaction date. In paragraph (g)(2), we propose to continue to require the title IV–E agency to report the transaction date for each of the child's exit dates reported in paragraph (g)(1). The transaction date is a non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) was entered into the information system. We propose that the transaction date must be no later than 30 days after the date of each exit.

The existing AFCARS requirement is that the transaction date must be no later than 60 days after the child's exit (see Appendix A to part 1355, section II, X.A). In the 2008 NPRM, we proposed that the transaction date must be within 15 days of the child's exit. As we stated in the 2008 NPRM, we have found that data is higher in quality and accuracy when the transaction date is close in time to the date that it describes. Commenters to the 2008 NPRM expressed the same concerns with the

15-day timeframe here as they expressed in the data element ''removal transaction date'' in paragraph (d)(2) of this section. Consistent with paragraph (d)(2), we believe that a 30-day timeframe is acceptable and represents a balanced approach that meets our need to ensure that exit information is timely and also addresses concerns from the commenters.

Exit reason. In paragraph (g)(3), we propose to require the title IV–E agency to collect and report information on the reason for the child's exit from out-of-home care. The title IV–E agency must indicate ''not applicable'' if the child has not exited out-of-home care. An exit occurs when the title IV–E agency's placement and care responsibility for the child ends. The response options we propose here are similar to the response options in the existing AFCARS and the response options that we proposed in the 2008 NPRM; however, we propose some modifications, which we explain in detail with each response option. We propose that the response options for paragraph (g)(3) be mutually exclusive, meaning the title IV–E agency must indicate only one reason for the child's exit from out-of-home care. For example, if the child exits out-of-home care due to adoption by a relative, the title IV–E agency must indicate ''adoption'' as the exit reason.

We propose that the title IV–E agency indicate the exit reason of ''reunify with parent(s) or legal guardian(s)'' if the child was returned to his or her parent(s) or legal guardian(s) and the title IV–E agency's placement and care responsibility ends. This includes reunifying with a parent(s) or legal guardian(s) even if the child was not removed from that parent(s) or legal guardian(s). The existing AFCARS requirement defines this exit reason differently to include when the child was returned to the child's parent or principal caretaker's home (see Appendix A to part 1355, section II, X.B). We propose to revise the reunification exit reason to remove the term caretaker, as we believe it is too vague.

We propose that the title IV–E agency indicate ''live with other relatives'' if the child exited out-of-home care to live permanently with a relative, related by a biological, legal or marital connection, other than the child's parent(s) or legal guardian(s) and the title IV–E agency's placement and care responsibility ends. Our proposal is unchanged from the 2008 NPRM and is a slight modification of the current AFCARS exit reason. The current AFCARS exit reason of ''living with other relatives'' refers only to relatives other than the one from whose home the child was removed (see Appendix A to part 1355, section II, X.B). We are modifying this exit reason to remove the instruction from the existing AFCARS definition that such relatives are ''other than the ones from whom the child was removed'' because it is not necessary with the changes made to the exit reason ''reunify with parent(s) or legal guardian(s)'' that now includes reunification with the parent(s) or legal guardian(s) from whom the child was not removed. We did not receive comments on this in response to the 2008 NPRM.

We propose that the title IV–E agency indicate ''adoption'' if the child was legally adopted. Our proposal is unchanged from the existing AFCARS response option and the 2008 NPRM. We did not receive comments on this in response to the 2008 NPRM.

We propose that the title IV–E agency indicate ''emancipation'' if the child exits out-of-home care due to age. Our proposal differs from the existing AFCARS response option and the 2008 NPRM where this exit reason captures when a child leaves the title IV–E agency's placement and care responsibility because the child ages out of foster care, gets married or is confined to jail or prison (see Appendix A to part 1355, section II, X.B). Commenters in response to the 2008 NPRM suggested that we should define the exit reason ''emancipation'' to refer to a child reaching the ''age of majority'' only. We agree and have created a new response option of ''other'' to include children who exit out-of-home care for reasons not described in previous response options, including exit due to marriage, or confinement to jail or prison.

We propose that the title IV–E agency indicate ''guardianship'' if the child exited out-of-home care when a relative or other unrelated individual obtained legal guardianship of the child. This does not include instances where the child is returned to the legal guardian(s) from whom the child was removed because that exit reason would be ''reunify with parent(s) or legal guardian(s).'' Our proposal is similar to the existing AFCARS exit reason but differs from the 2008 NPRM. In the existing AFCARS, the guardianship exit reason is when permanent custody of the child was awarded to an individual (see Appendix A to part 1355, section II, X.B). In the 2008 NPRM, we proposed separate exit reasons of relative and non-relative legal guardianship. Commenters to the 2008 NPRM requested that we combine the ''relative guardianship'' and ''non-relative guardianship'' response options because they stated that it would be burdensome to reprogram the title IV–E agency's information system to make this distinction and did not see the value of making such a distinction in AFCARS. We understand the concerns and we are now proposing one exit reason to include both relative and non-relative legal guardianships.

We propose that the title IV–E agency indicate ''runaway or whereabouts unknown'' if the child ran away or the child's whereabouts are unknown at the time that the title IV–E agency's placement and care responsibility of the child ends. This exit reason in the existing AFCARS and the 2008 NPRM focus on the child running away as the reason for the child's exit (see Appendix A to part 1355, section II, X.B). Commenters to the 2008 NPRM suggested adding an exit reason of ''other'' in place of the proposed response option of ''runaway.'' We considered the comment, but concluded that having a response option of ''other'' would not yield better information for our analyses. We instead propose that the title IV–E agency select the exit reason ''runaway or whereabouts unknown'' when the child ran away or the child's whereabouts are unknown and the title IV–E agency's placement and care responsibility ends. Including children whose whereabouts are unknown in this exit reason is necessary since the title IV–E agency must report in AFCARS information on children who are in their placement and care responsibility, even if the child's whereabouts are unknown.

We propose that the title IV–E agency indicate ''death of child'' if the child died while in out-of-home care. Our proposal is unchanged from the existing AFCARS requirement and the 2008 NPRM. We did not receive comments on this exit reason.

We propose that the title IV–E agency indicate ''transfer to another agency'' if the exit reason was because placement and care responsibility of the child was transferred to another agency, either within or outside of the reporting State or Tribal service area, and the title IV–E agency's placement and care responsibility of the child ends. This does not include public agencies, Indian Tribes, Tribal organizations or consortia that have an agreement with a title IV–E agency under section 472(a)(2)(B) of the Act. Title IV–E agencies are to report this exit reason when the title IV–E agency transfers its placement and care responsibility to an agency outside of the title IV–E agency. These transfers often are made to a juvenile justice or disability agency, if these agencies are external to the title IV–E agency.

However, if such agencies reside within a single agency, such internal transfers of responsibility must not be included in this exit reason. If the title IV–E agency indicates that the child exited out-of-home care due to the child being transferred to another agency's placement and care responsibility, the title IV–E agency must complete the data element in paragraph (g)(4) of this section. Our proposal is essentially the same concept as the existing AFCARS definition of ''transfer to another agency'' (see Appendix A to part 1355, section II, X.B) and the 2008 NPRM proposal. We proposed in the 2008 NPRM and now to use the term ''placement and care responsibility'' rather than simply ''care'' as is used in the existing AFCARS so that it is clear that the title IV–E agency must report an exit when the actual ''placement and care responsibility'' for the child has changed. We did not receive comments on this response option in response to the 2008 NPRM; however, we made minor wording revisions in our proposed definition to be clear that it is not just another agency outside of the State, but also the Tribal service area, to accommodate Tribal title IV–E agencies (see section 479B of the Act).

We propose that the title IV–E agency indicate ''other'' if the child exited due to a reason not described in the above response options, such as marriage or confinement to jail or prison. This is a new proposal and is not required in the existing AFCARS regulation. We welcome comments on this proposal.

Transfer to another agency. In paragraph (g)(4), we propose to require the title IV–E agency to indicate the type of agency that received placement and care responsibility of the child, if the title IV–E agency indicated the exit reason ''transfer to another agency'' in paragraph (g)(3). This was a new proposed data element in the 2008 NPRM as title IV–E agencies are not required currently to report this information in the existing AFCARS. We are continuing our proposal because, as we stated in the 2008 NPRM, this will enhance our ability to know more about what happens to children who leave the title IV–E agency's placement and care responsibility. Further, this information can be used to meet the requirements of CAPTA for annual State data on the number of children transferred from the child welfare system into the custody of the juvenile justice system (section 106(d)(14) of CAPTA). The response options we propose here are similar to the response options that we proposed in the 2008 NPRM but are modified slightly to provide a comprehensive list of potential agencies that may receive placement and care responsibility of the child. Each proposed response option is explained below.

We propose that the title IV–E agency indicate ''State title IV–E agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to a State title IV–E agency. This is a new proposed response option that was not proposed in the 2008 NPRM. We propose it now to clearly know when a child is transferred to a State title IV–E agency, as opposed to a different State agency.

We propose that the title IV–E agency indicate ''Tribal title IV–E agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to a Tribal title IV–E agency. This is a new proposed response option that was not proposed in the 2008 NPRM. We propose it now to clearly know when a child is transferred to a Tribal title IV–E agency and to distinguish between transferring placement and care responsibility for the child to a Tribal title IV–E agency or an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly per section 479B of the Act.

We propose that the title IV–E agency indicate ''Indian Tribe or Tribal agency (non-IV–E)'' if the reporting title IV–E agency transferred placement and care responsibility of the child to an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly, per section 479B of the Act. We proposed this response option in the 2008 NPRM; however, we modified the title of the response option from ''Tribe or Tribal agency'' to ''Indian Tribe or Tribal agency'' and clarified the definition to distinguish between transferring placement and care responsibility for the child to a Tribal title IV–E agency or an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly, per section 479B of the Act.

We propose that the title IV–E agency indicate ''juvenile justice agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to a juvenile justice agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

We propose that the title IV–E agency indicate ''mental health agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to a mental health agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

We propose that the title IV–E agency indicate ''other public agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to another public agency other than a State or Tribal title IV–E agency, juvenile justice or mental health agency. We proposed a similar response option in the 2008 NPRM that was titled ''other State agency.'' We modified the title and definition from the 2008 NPRM proposal to provide a comprehensive list of agencies to which the reporting title IV–E agency may transfer placement and care responsibility for the child.

We propose that the title IV–E agency indicate ''private agency'' if the reporting title IV–E agency transferred placement and care responsibility of the child to a private agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

Finally, we would like to note that we are not continuing to propose the data elements ''death due to child abuse/neglect in care'' and ''circumstances at exit from out-of-home care'' that were proposed in the 2008 NPRM. Several commenters to the 2008 NPRM expressed that the previously proposed data element ''death due to child abuse/neglect in care'' was redundant with the information collected in NCANDS and that collecting this information in AFCARS could lead to misinformation and under or over-reporting of deaths of children in care due to abuse or neglect. Commenters to the 2008 NPRM also pointed out that a final decision regarding a child's fatality could take extensive time to resolve which could cause issues for timely data submissions. Additionally, commenters to the 2008 NPRM were overwhelmingly opposed to our proposal to collect information on child and family circumstances at any point in time other than at removal, consistent with the comments made regarding paragraph (f) of this section. Commenters in response to the 2008 NPRM expressed strong opposition to reporting child and family circumstances at exit citing worker burden to enter the data and questioned the value of collecting such information after the time of removal. Commenters to the 2008 NPRM also felt that the proposed list of circumstances would not capture the progress that is made in a case and would not properly illustrate the issues surrounding a family. Thus, based on the comments in response to the 2008 NPRM, we decided not to propose these data elements.

Section 1355.43(h) Exit to Adoption and Guardianship Information

In paragraph (h), we propose that the title IV–E agency collect and report information on the child's exit from out-of-home care to a finalized adoption or legal guardianship. This information must be reported if the title IV–E agency reported the child's exit reason in paragraph (g)(3) as ''adoption'' or ''guardianship.'' Otherwise the title IV–E agency must leave the data elements described in paragraph (h) of this section blank.

We propose to require the title IV–E agency to collect and report data elements in paragraph (h) of this section which are similar to those currently collected in the AFCARS adoption data file, and proposed in the 2008 NPRM. Title IV–E agencies are required to collect and report demographic characteristics of children in foster care and adopted children and their biological and adoptive or foster parents (section 479(c)(3)(A) of the Act). We proposed in the 2008 NPRM to collect information on finalized adoptions and adoptive parents in the out-of-home care data file, instead of in a separate adoption data file as is the structure of the current AFCARS. We continue our proposal from the 2008 NPRM to collect information on finalized adoptions and adoptive parents in the out-of-home care data file and we are modifying it to require the title IV–E agency to collect and report information in paragraph (h) on legal guardianships and legal guardians. Section 473(d) of the Act authorizes a title IV–E guardianship assistance program that provides Federal assistance and subsidies to eligible children who exit foster care to a relative legal guardianship. Title IV–E agencies report in the existing AFCARS whether children discharge from foster care to guardianship, but no other information is reported on the legal guardians. ACF is very interested in collecting data in AFCARS on legal guardianships so that we may analyze the use of legal guardianship as a permanency option for children in foster care. We also received many supportive comments in response to the 2010 FR Notice to collecting the same information for children in legal guardianships and adoptions stating that collecting more information on guardianships would provide an important look at the children who exit out-of-home care to legal guardianship.

Marital status of the adoptive parent(s) or guardian(s). In paragraph (h)(1), we propose to require the title IV–E agency to report the marital status of the adoptive parent(s) or legal guardian(s). We propose to require the title IV–E agency to indicate ''married couple'' if the adoptive parents or legal guardians are considered to be united in matrimony according to applicable laws, including common law marriage where provided by applicable laws. We propose to require the title IV–E agency to indicate ''unmarried couple'' if the adoptive parents or legal guardians are living together as a couple, but are not united in matrimony according to applicable laws. The response options ''married couple'' and ''unmarried couple'' include instances where only one person in the couple is adopting or obtaining legal guardianship of the child. We propose to require the title IV–E agency to indicate ''single female'' if the adoptive parent or legal guardian is a female who is not married (including common law marriage) and is not living with another individual as part of a couple. We propose to require the title IV–E agency to indicate ''single male'' if the adoptive parent or legal guardian is a male who is not married (including common law marriage) and is not living with another individual as part of a couple. If the title IV–E agency indicates the response option ''married couple'' or ''unmarried couple,'' the title IV–E agency must complete the data elements for the second adoptive parent or second legal guardian in paragraphs (h)(6) through (h)(8) of this section; otherwise the title IV–E agency must leave these data elements blank. Consistent with the existing AFCARS requirement and the 2008 NPRM proposal, we are not proposing a separate category for an adoptive parent or legal guardian who is a widow or widower. Such individuals must continue to be reported according to his or her current marital/living situation.

Our proposed response options are similar to those in the existing AFCARS regulation (see Appendix B to part 1355, section II, VI.A) and the 2008 NPRM. We modified our proposal to include collecting the marital status of the child's legal guardian(s) and clarified the directions in this data element in response to commenters to the 2008 NPRM who requested direction on how to indicate instances where one individual of a married or unmarried couple adopts or obtains legal guardianship of a child.

Child's relationship to the adoptive parent(s) or guardians(s). In paragraph (h)(2), we propose to require the title IV–E agency to report the relationship between the child and his or her adoptive parent(s) or legal guardian(s). We propose that the title IV–E agency indicate whether each relationship between the child and his or her adoptive parent(s) or legal guardian(s) ''applies'' or ''does not apply'' in paragraphs (h)(2)(i) through (h)(2)(viii) paternal or maternal grandparents, other paternal or maternal relatives, sibling(s), kin, non-relative(s) and foster parent(s).

In the existing AFCARS, the types of relationships between the child and his or her adoptive parent(s) are limited to stepparent, other relative of child by birth or marriage, foster parent and non-relative (see Appendix B to part 1355, section II, VI.D). In the 2008 NPRM, we proposed an expanded list of relationships almost identical to the relationships proposed now, in order to further examine the extent to which relatives are being utilized as resources, but we did not include kin relationships as a response option. We received many supportive comments in response to the 2008 NPRM on the proposed expanded list; however, we also received comments for this data element and throughout the 2008 NPRM requesting the inclusion of kin relationships into the data elements. Based on the comments to the 2008 NPRM, we propose to include kin relationships in this data element, consistent with the addition of kin throughout our current proposal. We also modified the proposed response options to require the title IV–E agency to report the relationship between the child and his or her legal guardian(s). No other modifications were made to paragraph (h)(2) beyond the modifications already explained.

Date of birth of adoptive parent(s) or guardian(s). In paragraphs (h)(3) and (h)(6), we propose to require the title IV–E agency to report the month, day and year of birth of each adoptive parent or legal guardian. If the title IV–E agency indicated ''married couple'' or ''unmarried couple'' in paragraph (h)(1), the title IV–E agency must indicate the date of birth for both members of the couple in paragraphs (h)(3) and (h)(6), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the date of birth of the first adoptive parent or legal guardian in paragraph (h)(3) and the date of birth for the second adoptive parent, legal guardian, or other member of the couple in paragraph (h)(6). If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (h)(1), the title IV–E agency must indicate that person's date of birth in paragraph (h)(3) and leave paragraph (h)(6) blank.

The title IV–E agency is required to report in the existing AFCARS only the year of birth for the adoptive parent(s)

(see Appendix B to part 1355, section II, VI.B). In the 2008 NPRM we proposed to require the title IV–E agency to report the month, day and year for each adoptive parent's birth because we believe that title IV–E agencies already collect a full date of birth. We did not receive comments in response to the 2008 NPRM on this data element; however, we modified our proposal from the 2008 NPRM to include collecting a full date of birth for the child's legal guardian(s), consistent with our proposed changes throughout paragraph (h).

Race of adoptive parent(s) or guardian(s). In paragraphs (h)(4)(i) through (vii) and (h)(7)(i) through (vii), we propose to require the title IV–E agency to report information on the race of each adoptive parent or legal guardian. If the title IV–E agency indicated ''married couple'' or ''unmarried couple'' in paragraph (h)(1), the title IV–E agency must indicate the race for both members of the couple in paragraphs (h)(4) and (h)(7), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the race for the first adoptive parent or legal guardian in paragraph (h)(4) and the race for the second adoptive parent, legal guardian, or other member of the couple in paragraph (h)(7). If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (h)(1), the title IV–E agency must indicate that person's race in paragraph (h)(4) and leave paragraph (h)(7) blank.

The racial categories are consistent with the OMB standards for collecting information on race. Commenters to the 2008 NPRM suggested changes for the racial categories; however, we do not propose any changes here. The response options proposed in paragraphs (h)(4)(i) through (h)(4)(vii) and (h)(7)(i) through (h)(7)(vii) are the same as those in the existing AFCARS regulations (see Appendix B to part 1355, section II, VI.C), the 2008 NPRM, and other sections of this proposed rule where demographic information on race is collected; however, we modified our proposal from the 2008 NPRM to include collecting information on the legal guardian's race, consistent with our proposed changes throughout paragraph (h).

Consistent with the existing AFCARS requirement and the 2008 NPRM, the title IV–E agency must allow the adoptive parent or legal guardian to determine his or her own race. If the adoptive parent, legal guardian or other member of the couple does not know his or her race, the title IV–E agency must indicate that this information is not known (see paragraphs (h)(4)(vi) and (h)(7)(vi)). It is acceptable for the adoptive parent, legal guardian or other member of the couple to identify with more than one race, but not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that one of the races is not known (see paragraphs (h)(4)(vi) and (h)(7)(vi)). If the adoptive parent, legal guardian or other member of the couple declines to identify his or her race, the title IV–E agency must indicate that this information was declined (see paragraphs (h)(4)(vii) and (h)(7)(vii)).

Hispanic or Latino ethnicity of adoptive parent(s) or guardian(s). In paragraphs (h)(5) and (h)(8), we propose to require the title IV–E agency to report the Hispanic or Latino ethnicity of each adoptive parent or legal guardian by indicating ''yes'' or ''no.'' If the title IV–E agency indicated ''married couple'' or ''unmarried couple'' in paragraph (h)(1), the title IV–E agency must indicate information for both members of the couple in paragraph (h)(5) and (h)(8), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the Hispanic or Latino ethnicity for the first adoptive parent or legal guardian in paragraph (h)(5) and in paragraph (h)(8) for the second adoptive parent, legal guardian, or other member of the couple. If the title IV–E agency indicated ''single female'' or ''single male'' in paragraph (h)(1), the title IV–E agency must complete paragraph (h)(5) for that person and leave paragraph (h)(8) blank.

Similar to the data elements on race in paragraphs (h)(4) and (h)(7), the definitions in paragraph (h)(5) and (h)(8) are also consistent with the OMB race and ethnicity standards, as described in section 1355.43(b) of this proposed rule. Consistent with the existing AFCARS requirement and the 2008 NPRM, the title IV–E agency must allow the adoptive parent, legal guardian or other member of the couple to determine his or her own ethnicity. If the adoptive parent, legal guardian or other member of the couple does not know his or her ethnicity, the title IV–E agency must indicate the response option ''unknown.'' If the adoptive parent, legal guardian or other member of the couple refuses to identify his or her ethnicity, the title IV–E agency must indicate that the information was declined.

Our proposal is the same as the existing AFCARS requirement (see Appendix B to part 1355, section II, VI.C), the 2008 NPRM and other sections of this proposed rule where demographic information on ethnicity is collected. We did not receive comments from the 2008 NPRM on this data element; however, we propose to require that the title IV–E agency collect this information for the child's legal guardian(s), consistent with our proposed changes throughout paragraph (h).

Inter/Intrajurisdictional adoption or guardianship. In paragraph (h)(9), we propose to require the title IV–E agency to report whether the child was placed within the State or Tribal service area, outside of the State or Tribal service area or into another country for the adoption or legal guardianship. We propose to require the title IV–E agency to indicate ''interjurisdictional adoption or guardianship'' if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the State or Tribal service area. We propose to require the title IV–E agency to indicate ''intercountry adoption or guardianship'' if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the United States of America. We propose to require the title IV–E agency to indicate ''intrajurisdictional adoption or guardianship'' if the reporting title IV–E agency placed the child within the same State or Tribal service area. If the title IV–E agency indicates either ''interjurisdictional adoption or guardianship'' or ''intercountry adoption or guardianship'' for the child's adoption or legal guardianship, the title IV–E agency must complete the data element in paragraph (h)(10); otherwise the title IV–E agency must leave paragraph (h)(10) blank.

In the existing AFCARS, the title IV–E agency is required to report the location of the agency or individual that had custody or responsibility of the child at the time of initiation of adoption proceedings from a list of three options: Within State; another State; or another country (see Appendix B to section II, VII.A). We proposed in the 2008 NPRM to change the name of the data element and the response options to: Interstate adoption; intercountry adoption; or intrastate adoption. We did not receive comments from the 2008 NPRM on this data element; however, we propose modifications to the 2008 NPRM proposal to collect information on inter/intrajurisdictional legal guardianships, consistent with other proposed changes to collect information on legal guardianships throughout paragraph (h). We also modified the definitions of the response options from

the 2008 NPRM proposal to include Tribal title IV–E agencies. We believe that our proposal may allow us to identify trends and/or challenges in interjurisdictional adoptions/guardianships.

Interjurisdictional adoption or guardianship jurisdiction. In paragraph (h)(10), we propose to require the title IV–E agency to indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for adoption or legal guardianship. This data element must be completed only if the title IV–E agency indicated ''interjurisdictional adoption or guardianship'' or ''intercountry adoption or guardianship'' in paragraph (h)(9); otherwise the title IV–E agency must leave it blank.

Title IV–E agencies are not required to report location information on an interjurisdictional or intercountry adoption or guardianship in the existing AFCARS. In the 2008 NPRM, we proposed requiring for the first time that the title IV–E agency report the location of the child's adoption using the State's numeric two-digit FIPS code. Commenters to the 2008 NPRM expressed concern with keeping up with ever-changing FIPS codes. We are modifying our 2008 NPRM proposal to remove FIPS codes, which are no longer being maintained and updated, and do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes or other countries. Instead, we propose to require that the title IV–E agency indicate the jurisdiction's or country's name for identification purposes which we believe will address commenter concerns. ACF will work with title IV–E agencies to develop valid response options for this element. We also believe that the information reported in this data element, in combination with the information reported in paragraph (h)(9), will provide information on the extent to which title IV–E agencies are maximizing all potential adoptive and guardianship resources for waiting children and will assist ACF in responding to questions and concerns regarding interjurisdictional and intercountry placement issues.

Adoption or guardianship placing agency. In paragraph (h)(11), we propose to require the title IV–E agency to report the agency that placed the child for adoption or legal guardianship. We propose to require the title IV–E agency to indicate ''title IV–E agency'' if the reporting title IV–E agency placed the child for adoption or legal guardianship. We propose to require the title IV–E agency to indicate ''private agency under agreement'' if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV–E agency. We propose to require the title IV–E agency to indicate ''Indian Tribe under contract/agreement'' if an Indian Tribe, Tribal organization or consortium placed the child for adoption or legal guardianship through a contract or agreement with the reporting title IV–E agency.

In the existing AFCARS, the title IV–E agency is required to report in the adoption data file the agency or individual that placed the child for adoption from a list of response options public or private agency, Tribal agency, independent person or birth parent (see Appendix B to part 1355, section II, VII.B). In the 2008 NPRM, we proposed to require the title IV–E agency to indicate the adoption placing agency from the response options ''State agency,'' ''private agency under a contract/agreement'' or ''Tribal agency with agreement.'' We did not receive comments to the 2008 NPRM on this data element; however, we propose modifications to the response options, explained in detail below. A general modification we propose is for title IV–E agencies to report the agency that placed the child for guardianship. This modification is consistent with modifications made throughout paragraph (h) to collect information on legal guardianships. We proposed in the 2008 NPRM to only collect this information for adoptions.

We propose to modify the response option ''State agency'' that was proposed in the 2008 NPRM to ''title IV–E agency'' because this language is inclusive of State and Tribal title IV–E agencies.

We propose to modify the definition of the response option ''private agency under agreement'' as proposed in the 2008 NPRM to remove the language specifying that the reporting State had placement and care responsibility for the child. This language is unnecessary because this data element is now in the out-of-home care data file.

We propose to modify the response option ''Tribal agency with agreement'' that was proposed in the 2008 NPRM to be ''Indian Tribe under contract/agreement'' to be inclusive of Indian Tribes, Tribal organizations or consortia that may have a contract or an agreement with the title IV–E agency. Additionally, we removed the language proposed in the 2008 NPRM specifying that the reporting State had placement and care responsibility of the child because this data element is now in the out-of-home care data file.

Section 1355.44 Adoption and Guardianship Assistance Data File Elements

We propose to add section 1355.44 which provides all elements for the adoption and guardianship assistance data file. The proposal is for ACF to collect and report information commonly found in the title IV–E adoption or guardianship assistance agreement for the adoption and guardianship assistance reporting population as described in section 1355.41(b). In this data file, we propose to collect information on (1) the title IV–E agency submitting the adoption and guardianship assistance data file, (2) basic demographic information on each child, including the child's date of birth, gender, race and ethnicity and (3) information in the child's title IV–E adoption or guardianship agreement, including the date of finalization, and amount of subsidy and nonrecurring costs as well as living arrangement information. We propose this information to supplement data on adoption and legal guardianships collected in section 1355.43(h).

Currently, we collect information in the adoption data file on the reporting title IV–E agency, demographic information for adopted children in the data file's reporting population, information on the child's special needs status, birth parents, adoptive parents, placement information and whether the child receives State/Federal adoption support (see Appendix B to part 1355, Section I–VII). Currently we collect limited information on the population of children receiving adoption assistance and no information on children receiving title IV–E guardianship assistance in the adoption data file.

In the 2008 NPRM, we proposed to change the structure and content of the current AFCARS data files by no longer including an adoption file and requiring title IV–E agencies to report information on foster care adoptions and adoptive families in the out-of-home care data file only. We proposed that title IV–E agencies submit a new adoption and guardianship subsidy data file with information on children who were the subject of a State or Federal adoption assistance agreement (regardless of whether their adoption was final), additional information surrounding those adoption agreements and very limited information on children who were the subject of a subsidized guardianship agreement with the title IV–E agency.

The current proposal for the adoption and guardianship assistance data file contains similar data elements as the 2008 NPRM proposal, but differs in several significant ways. First, we propose to require a title IV–E agency to collect and report the same information on children under title IV–E guardianship assistance agreements as children under title IV–E adoption assistance agreements, per the revised adoption and guardianship assistance reporting population described in section 1355.41(b). Second, we propose that a title IV–E agency collect and report the same information in this data file for only those children in a finalized adoption or legal guardianship under a title IV–E assistance agreement. Although ACF no longer proposes to collect information on State-funded legal guardianships, this modification means that ACF will collect information on each child in a legal guardianship under a title IV–E relative legal guardianship assistance agreement in an increased number of data elements than we proposed in the 2008 NPRM. Finally, we propose for the first time to require a title IV–E agency to collect and report information on siblings who are living with the child in his or her adoptive or guardianship home.

We received many public comments in response to the proposal to restructure the collection of adoption information and the introduction of a separate subsidy data file in the 2008 NPRM and the 2010 FR Notice. Many commenters were pleased to see our proposal for the new adoption assistance and guardianship subsidy data file, and felt that collecting information for children in legal guardianships and adoptions would provide an important look at these children. Some commenters to the 2010 FR Notice expressed concerns, in general, about the necessity of collecting ongoing information for a child after his or her adoption or legal guardianship has been finalized and questioned how the expansion of data elements as proposed in the 2008 NPRM would help improve outcomes for children. ACF is required, per section 479(c)(3) of the Act, to capture information on adopted children, including demographics and information about the child's title IV–E adoption. While there is no statutory mandate to collect similar information for children who have achieved permanency through guardianship, we propose to collect the same information because we have the same need for the information for children supported by title IV–E funding, per section 473(d) of the Act.

Section 1355.44(a) General Information

In paragraph (a), we propose to collect general information that identifies the title IV–E agency submitting the adoption and guardianship assistance data file, the report date, and the child's record number.

Title IV–E agency. In paragraph (a)(1), we propose that the title IV–E agency indicate the name of the title IV–E agency responsible for submitting AFCARS data to ACF. A State title IV–E agency must indicate its State name for identification purposes. ACF will work with Tribal title IV–E agencies to provide further guidance on this element during implementation. This proposal differs from the existing AFCARS regulation which requires the title IV–E agency to identify itself using the U.S. Postal Service two letter abbreviation for the State or the ACF-provided abbreviation for the title IV–E Tribal agency responsible for submitting the AFCARS data to ACF. This proposal is also different from the 2008 NPRM in which we proposed to use Federal Information Processing Standard (FIPS) codes for State identification which are no longer being updated and maintained. We did not receive comments on this data element in response to the 2008 NPRM, but have opted not to proceed with the NPRM proposal to remove FIPS codes, which are no longer being updated and maintained.

The definition of this data element is the same as the one we proposed in the out-of-home care data file (see section 1355.43(a)(1)). We propose that the title IV–E agency report this information in the adoption and guardianship assistance data file as well as in the out-of-home care data file because the title IV–E agency will submit the two data files to us separately.

Report date. In paragraph (a)(2), we propose that a title IV–E agency report to us the last month and year that corresponds with the end of the report period, with the month being either March or September of any given year. The proposal for the report date is the same as in the existing AFCARS, and did not generate any comments when we proposed it in the 2008 NPRM. This proposal is the same as the report date we proposed for the out-of-home care data file in section 1355.43(a)(2).

Child record number. In paragraph (a)(3), we propose that the title IV–E agency report the child's record number, which is a unique person identification number, as an encrypted number. If a child was previously in out-of-home care, this number must be the same as the child record number provided in section 1355.43(a)(4) of the out-of-home care data file. This proposed data element differs from both the existing AFCARS and the 2008 NPRM proposal. The 2008 NPRM proposal required a title IV–E agency to eliminate the use of sequential numbers for AFCARS, and we received no comments in response to this proposal.

Our current proposal prohibits the use of sequential numbers for AFCARS, and also requires the title IV–E agency to use the same child record number as is used in the out-of-home care data file if the child was in the out-of-home care reporting population before entering the adoption and guardianship assistance reporting population.

Similar to the instructions for the record number data element in the out-of-home care data file, the title IV–E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The title IV–E agency's encryption methodology must meet any standards that ACF prescribes through technical bulletins or policy. Requiring the title IV–E agency to maintain unique, encrypted child record numbers for AFCARS data files will allow us to track the amount of title IV–E adoption and guardianship assistance changes over time, and will help predict future changes based upon the age distribution of the population. We propose for the title IV–E agency to retain the same child record numbers between AFCARS data files, when applicable, to allow ACF to collect more comprehensive information about the permanency of title IV–E adoption and legal guardianship placements in the title IV–E program, as well as conduct analysis regarding the extent to which sibling groups are placed together permanently.

Section 1355.44(b) Child Demographics

In paragraph (b), we propose that the title IV–E agency collect and report demographic information on the child, including the child's date of birth, race and ethnicity.

Child's Birth Information. In paragraph (b)(1), we propose to collect information on the child's date of birth and whether the child was born in the United States.

We propose in paragraph (b)(1)(i), that the title IV–E agency report the child's date of birth in month, day and year format. This is basic demographic information which we are mandated to collect in section 479(c)(3)(A) of the Act for adoptions and is similar to the existing AFCARS requirement for the adoption data file, although we currently propose to collect this information for children in legal

guardianships as well. We provided the same proposal in the 2008 NPRM and there were no comments submitted in response to this proposed element.

The child's date of birth will assist us in conducting a variety of analyses including determining at what age children are being adopted or placed in legal guardianship under the title IV–E program. Since most children receive title IV–E adoption or guardianship assistance until the age of 18, or older for a title IV–E agency that chooses to extend assistance up to age 19, 20 or 21, knowing the child's date of birth will assist the title IV–E agency and the Federal government in conducting budget projections and program planning.

In paragraph (b)(1)(ii), we propose to require the title IV–E agency to report whether or not the child was born in the United States. If the child was born in the United States, indicate ''yes.'' If the child was born in a country other than the United States, indicate ''no.'' This is a newly proposed data element and will give us a national picture of how many foreign-born children are receiving title IV–E adoption or guardianship assistance. We specifically request comments from State and Tribal title IV–E agencies on this data element.

Child's sex. In paragraph (b)(2), we propose that the title IV–E agency report whether the child's sex is male or female, as appropriate. This proposal is unchanged from the requirement in the existing AFCARS regulation.

Race data elements. In paragraphs (b)(3)(i) through (b)(3)(viii), we propose that the title IV–E agency report information on the race of the child by indicating whether each race category applies with a ''yes'' or ''no.'' The race definitions proposed are consistent with the existing AFCARS race definitions, and are similar to the response options proposed in the 2008 NPRM. The only difference in the current proposal is that we allow legal guardians to determine the child's race in addition to the child and the child's parent(s). We include this option to acknowledge that a relative guardian, rather than the child's parent(s), may be the appropriate person to determine the child's race, if that child has been living with him or her. As discussed earlier in section 1355.43(b)(3), the categories of race proposed are consistent with the OMB standards for collecting information on race. The title IV–E agency is to allow the parent(s), legal guardian(s) or the child, if appropriate, to determine the child's race. There was one public comment in response to the 2008 NPRM that suggested allowing a title IV–E agency to combine categories of race and ethnicity. We agree, and the racial categories proposed both in the 2008 NPRM and the current proposal are aligned with those in NCANDS and NYTD.

If the child's race is unknown, the title IV–E agency must so indicate, as required in paragraph (b)(2)(vi). It is acceptable for the child to be identified with more than one race, but for the child, parent(s) or legal guardian(s) to not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that a race is unknown. If the child is abandoned the title IV–E agency must indicate that the race cannot be determined in paragraph (b)(2)(vii). Finally, if the parent(s), legal guardian(s) or the child, if appropriate, declines to identify the child's race, the title IV–E agency must indicate that this information was declined as outlined in paragraph (b)(2)(viii).

Hispanic or Latino ethnicity. We propose in paragraph (b)(4) that the title IV–E agency report the Hispanic or Latino ethnicity of the child, consistent with the current AFCARS requirement, and similar to the 2008 NPRM proposal. The only difference in the current proposal is that we allow the legal guardian(s) to determine the child's ethnicity in addition to the child and the child's parent(s). We include this option to acknowledge that a relative guardian, rather than the child's parent(s), may be the appropriate person to determine the child's ethnicity, if that child has been living with him or her. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, we propose, as we did in the 2008 NPRM, that the title IV–E agency may report whether the child's ethnicity is unknown, whether the child was abandoned, or whether the parent(s), legal guardian(s) or child, if appropriate, could not communicate or declined to provide this information. There were no comments submitted in response to this proposed data element in the 2008 NPRM.

Section 1355.44(c) Title IV–E Adoption and Guardianship Assistance Arrangement and Agreement Information

In paragraph (c), we propose that the title IV–E agency collect and report ongoing information on title IV–E adoption and guardianship arrangements and agreements. This proposed section is different from existing AFCARS, which does not include a data file with ongoing information on subsidies. It only includes information in the adoption data file on a child's demographics, placement information and court information, as well as limited information on both the child's birth parent(s) and adoptive parent(s).

This new proposed section differs from both the existing AFCARS and the 2008 NPRM in that we propose to collect ongoing adoption and guardianship assistance agreement information for only those children with finalized title IV–E adoption and legal guardianship assistance agreements in effect during the report period. Throughout this proposed section, a title IV–E agency is no longer required to report information on children who are in adoptive placements but do not yet have finalized adoptions or those with State-funded adoption assistance agreements. We propose to collect information on title IV–E adoption and guardianship assistance agreements for children with finalized adoptions or legal guardianships regardless of whether the agreement is for an ongoing subsidy, nonrecurring costs or in the case of a title IV–E finalized adoption, a Medicaid-only subsidy.

In the 2008 NPRM, we proposed that the title IV–E agency collect information on a child's adoption and adoptive parents at the time of a child's exit to adoption in section 1355.43(h) of the out-of-home care data file and new information in the adoption assistance and guardianship subsidy data file. We received several public comments in response to this proposal in the 2008 NPRM indicating concern that this change would increase burden on caseworkers and require programming changes in the SACWIS systems of title IV–E agencies. There were also a number of commenters to the 2010 FR Notice concerned about the increased burden of collecting data on children in adoptions and legal guardianships, and several commenters suggested that the requirement to collect case-level data on children in adoptive and guardianship homes would be a significant barrier to obtaining information since children already would have achieved permanency. We contemplated these comments, but, per the new adoption and guardianship assistance reporting population described in section 1355.41(b), we now propose to collect information for only those children under title IV–E adoption and guardianship assistance agreements. Because the title IV–E agency still supports the children under these adoption and guardianship assistance agreements, we anticipate that most of the information would already be in the case files or included in other modules of the title IV–E agency's case

management system, and therefore the title IV–E agency would not need to contact the adoptive parent(s) or relative guardian(s) for the information.

Assistance agreement type. In paragraph (c)(1), we propose for the first time to require the title IV–E agency to indicate whether the child is or was in a finalized adoption with a title IV–E adoption assistance agreement pursuant to section 473(a)(1)(A) of the Act or in a legal guardianship with a title IV–E guardianship assistance agreement pursuant to section 473(d) of the Act, in effect during the report period. The title IV–E agency is not required to collect and report this information in the existing AFCARS. In the 2008 NPRM, we proposed two data elements aimed at collecting information on agreement type ''adoption assistance type'' (adoptive placement, finalized title IV–E adoption pursuant to title IV–E assistance agreement or finalized adoption pursuant to State assistance agreement) and ''subsidized guardianship agreement type'' (supported by title IV–E funds or State funds). In the current proposal, we eliminate data elements proposed in the 2008 NPRM and instead propose one data element with narrowed response options since we propose to collect information on children under title IV–E adoption and guardianship assistance agreements only per 1355.41(b) rather than both title IV–E and non-title IV–E agreements. We did not receive specific comments on either proposed assistance agreement type data element in response to the 2008 NPRM.

Adoption or guardianship subsidy amount. In paragraph (c)(2), we propose that the title IV–E agency provide the per diem dollar amount of the title IV–E financial subsidy payment, if any, made to the adoptive parent(s) or guardian(s) on behalf of the child during the last month of the current report period. This does not include non-recurring costs. We propose that the title IV–E agency report the total amount of the subsidy payment made to the adoptive parent(s) or guardian(s), rather than the portion that the title IV–E agency may seek reimbursement from the Federal government under title IV–E. Further, in any situation where the title IV–E agency has an adoption or guardianship assistance agreement with adoptive parent(s) or legal guardian(s) but did not provide an actual payment in the last month of the report period, the title IV–E agency must indicate that $0 payment was made. Such a situation is likely to occur if the title IV–E adoption or guardianship assistance agreement is for a ''deferred subsidy,'' which a title IV–E agency may enter into at a later point.

This data element differs from both the existing AFCARS requirements and the data element proposed in the 2008 NPRM, however we request the information for the same reasons. Existing AFCARS policy guidance requires a title IV–E agency to report the monthly subsidy amount one time—at the finalization of the adoption.

We proposed in the 2008 NPRM that a title IV–E agency report information in two separate data elements on the subsidy amount for the adoption and legal guardianship for each report period beginning when the assistance agreement becomes effective and continue reporting for the duration of the agreement. We received a public comment in response to the ''adoption assistance subsidy amount'' data element proposed in the 2008 NPRM that suggested that a title IV–E agency should not be required to collect data on adoption agreements more than once, as the information is relatively stable over time. We considered this comment, and while the amounts may not change much from month to month, we have seen reductions in title IV–E subsidy amounts in recent years. Therefore, we continue to propose to collect this information so we can discern changing circumstances and fluctuations in subsidy amounts in title IV–E adoption and guardianship assistance agreements for as long as the agreement is in effect. We believe that collecting information on title IV–E adoption and guardianship subsidy amounts will be useful for States, Indian Tribes and the Federal government for budgetary planning and projection purposes. Information on title IV–E guardianship is collected in the CB–496 form currently; however this information is aggregated and does not provide specific information on the amount of the title IV–E guardianship subsidy that each child receives. Collecting child-level data on the amount of title IV–E guardianship assistance received by each child would allow ACF to conduct more nuanced analysis to determine how many children there are in certain subsidy ranges and more accurately project budget and program costs.

Nonrecurring adoption or guardianship costs. In paragraph (c)(3), we propose that a title IV–E agency report whether the IV–E agency made payments on behalf of the adoptive parent(s) per section 473(a)(6) of the Act or relative guardian(s), per section 473(d) of the Act, for nonrecurring costs. The title IV–E agency must indicate ''costs paid'' if the title IV–E agency paid nonrecurring costs at any point during the report period; otherwise the title IV–E agency must indicate ''no costs paid.''

Nonrecurring adoption or guardianship cost amount. In paragraph (c)(4), we propose that the title IV–E agency report the total dollar amount of payments the title IV–E agency made on behalf of the adoptive parent(s) or guardian(s) for nonrecurring costs during the report period. This includes payments the title IV–E agency makes directly to other service providers rather than to the adoptive parent(s) or relative guardian(s). The title IV–E agency must report an amount only if it responded that expenses for nonrecurring costs were paid in paragraph (c)(3). If the title IV–E agency indicated that no nonrecurring costs were paid, then the title IV–E agency must leave this data element blank.

Unlike title IV–E adoption and guardianship assistance payments which are ongoing and may fluctuate over time, reimbursements for nonrecurring costs are more likely to be made in a lump-sum or over a finite period of time. Although we propose to require title IV–E agencies to report the amount of the adoption or guardianship subsidy during the last month of each report period, we also propose to require the title IV–E agency to report the total amount of the non-recurring costs over the entire report period to capture the full amount of nonrecurring costs made on behalf of the adoptive parent(s) or legal guardian(s).

These data elements are not currently required in AFCARS and we first introduced them in the 2008 NPRM, but only for title IV–E adoption assistance agreements. The current proposal is a modification of the 2008 NPRM proposal to now include title IV–E legal guardianship agreements, per the revised adoption and guardianship assistance reporting population in section 1355.41(b). There were no substantive comments in response to the 2008 NPRM proposal to collect non-recurring costs of adoption. We seek information on nonrecurring cost reimbursements for adoption consistent with the requirement in section 479(c)(3)(D) of the Act to collect information on the extent of adoption assistance. There is no statutory mandate to collect this information for the IV–E guardianship program, however, since title IV–E funds are reimbursed for these costs, this information is essential for conducting budget projections and program planning for both title IV–E adoption assistance and guardianship assistance programs.

Adoption or guardianship finalization date. In paragraph (c)(5), we propose to require that the title IV–E agency report the date that the child's adoption was finalized or the child's guardianship became legally recognized. A child must have a finalized adoption or legal guardianship (in addition to a title IV–E agreement) in order to enter the adoption and guardianship assistance reporting population, therefore we believe that collecting the adoption or guardianship finalization date is fundamental to ensuring compliance with requirements in section 1355.41(b)(2) and to conduct budget projections. We received no substantive public comments in response to this proposal in the 2008 NPRM. The current proposal expands the 2008 NPRM proposal to account for a child in a legal guardianship under a title IV–E assistance agreement, as per the revised adoption and guardianship assistance reporting population described in section 1355.41(b).

An additional data element, ''final adoption'', was proposed in the 2008 NPRM that required a title IV–E agency to collect information on whether the child who is the subject of an adoption assistance agreement had his or her adoption finalized. We eliminated this data element to maintain consistency with our proposal to limit the adoption and guardianship assistance reporting population to children with a finalized adoption or legal guardianship and a title IV–E assistance agreement. If the proposed changes to this reporting population are applied, the ''final adoption'' data element is unnecessary.

Adoption or guardianship placing agency. In paragraph (c)(6), we propose to require the title IV–E agency to indicate the agency that placed the child under a title IV–E adoption or guardianship assistance agreement at the time of the adoption or legal guardianship finalization. We propose that the title IV–E agency indicate ''title IV–E agency'' if the reporting title IV–E agency placed the child for adoption or legal guardianship. We propose that the title IV–E agency indicate ''private agency under a contract/agreement'' if a private agency placed the child for adoption. We propose the title IV–E agency indicate ''Indian Tribe'' if an Indian Tribe, Tribal organization or consortium that is not a title IV–E agency placed the child for adoption or legal guardianship through some type of arrangement with the reporting title IV–E agency. This includes both Tribal agencies under a contract or agreement with the title IV–E agency to place the child, as well as an Indian Tribe that placed the child through another type of arrangement with the reporting title IV–E agency for an adoption or guardianship assistance agreement. We propose to retain the response option ''private agency'' from the existing AFCARS and 2008 NPRM for adoption only with minor modifications to their definitions. We propose to eliminate the response options ''birth parent'' and ''independent person'' as they are not applicable to the reporting population for the adoption and guardianship assistance data file proposed in section 1355.41(b).

This information is similar to what is proposed for section 1355.43(h)(11) but must be included in the adoption and guardianship assistance data file because this data file includes private agency adoptions for children who were not in foster care. The existing AFCARS includes this information in the adoption data file and requires the title IV–E agency to indicate the placing agency or individual from a limited number of response options that are public agency; private agency; Tribal agency; independent person and birth parent. We proposed in the 2008 NPRM to expand the response options for this proposal in order to collect more specific information about when the title IV–E agency was the placing agency, and as a result, several response options were newly proposed (State agency, private agency under contract/agreement, and Tribal agency with agreement), along with the retained options of ''Tribal agency,'' ''private agency,'' ''birth parent,'' and ''independent person''.

We did not receive comments on this data element in the 2008 NPRM, but several comments in the 2010 FR Notice were supportive of tracking adoptions through private agencies and Indian Tribes. Therefore, we revised the 2008 NPRM proposal to remove the response option of ''State agency'' and ''Tribal agency'' and replace them with the response option ''title IV–E agency'' in order to conform to the changes in Public Law 110–351 that allow for an Indian Tribe to operate a title IV–E program directly (section 479B of the Act).

We do not propose to include the separate response option of ''Tribal agency with agreement'' that was proposed in the 2008 NPRM. Instead, Indian Tribes with title IV–E agreements are included in the response option of ''Indian Tribe'' because the Indian Tribe has an arrangement with the reporting IV–E agency for a title IV–E adoption or guardianship assistance agreement. If the title IV–E agency provides a response to paragraph (c)(6) of ''Indian Tribe'' or ''private agency,'' the agency must complete paragraph (c)(7).

Inter/Intrajurisdictional adoption or guardianship. In paragraph (c)(7), we propose that the title IV–E agency identify whether the child had been placed under a title IV–E adoption or guardianship assistance agreement within the State or Tribal service area or in another State or Tribal service area for adoption or legal guardianship. This data element must be completed only if the title IV–E agency indicated either ''Indian Tribe'' or ''private agency'' in paragraph (c)(6). The title IV–E agency must indicate ''interjurisdictional adoption or guardianship'' if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or guardian(s) who lives outside of the reporting State or Tribal service area or ''intrajurisdictional'' if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or guardian(s) who lives in the reporting State or Tribal service area.

We propose to modify the 2008 NPRM proposal to limit our data collection in this data element to those children under title IV–E adoption and guardianship assistance agreements who were placed by an Indian Tribe or private agency through an arrangement with the title IV–E agency. We are making this modification per the revised adoption and guardianship assistance reporting population described in section 1355.41(b) and to avoid duplication in data collection with the information collected in section 1355.43(h)(9) on children under the placement and care responsibility of the title IV–E agency placed for adoption or legal guardianship. We also propose to delete the responses option ''intercountry adoption—incoming'' and ''intercountry adoption—outgoing.''

The current AFCARS requirement is for the title IV–E agency to indicate, in the adoption data file, the location of the individual or agency that had custody or responsibility for the child at the time the adoption proceedings were initiated. The 2008 NPRM proposed an expansion of this data element to require a title IV–E agency to indicate whether a child was placed across State or Tribal service area lines for the purposes of adoption or legal guardianship or was the subject of an incoming or outgoing intercountry adoption.

We received several public comments in response to the 2008 NPRM proposal indicating concern regarding the ability of the title IV–E agency to access information relating to international

adoptions. To address these concerns, and because we believe only a few children adopted from or placed overseas will be able to meet the definition of an ''applicable child'' per section 473(a)(2)(A)(ii) of the Act, we propose to eliminate the reporting of title IV–E intercountry adoptions (outgoing or incoming). For the purposes of AFCARS, maintaining a separate response option is not necessary, as children who are placed overseas for the purposes of adoption that are receiving title IV–E adoption assistance would still be tracked in AFCARS, and reported under the ''interjurisdictional adoption or guardianship'' response option.

Interjurisdictional adoption or guardianship jurisdiction. In paragraph (c)(8), we propose to require the title IV–E agency to identify the name of the State, Tribal service area or Indian reservation where the child was placed for adoption or legal guardianship. If a child is placed in an interjurisdictional adoption or guardianship with Tribal members as indicated in paragraph (c)(7), the title IV–E agency must indicate the State in which the Tribal members live. We seek to collect information in this proposal in combination with paragraph (c)(7) because we believe that together these data elements will allow ACF to analyze data related to the number of children in interjurisdictional adoptive and guardianship placements under title IV–E assistance agreements that were not in the out-of-home care reporting population, as well as the location of those children.

This data element is not included in the current AFCARS adoption file. In the 2008 NPRM, we proposed for the first time that the title IV–E agency indicate the FIPS code of the State or country in which the child was placed into or placed from. We received several comments in response to the 2008 NPRM for this data element that raised concerns about the stability of country codes from FIPS, and indicated that a title IV–E agency would have to significantly modify its system in order to capture FIPS code information for international adoption. We agreed with these comments because FIPS codes are no longer being maintained and updated, and they also do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes or other countries. Instead, we propose to require that the title IV–E agency report the jurisdiction or country name for those children placed by an Indian Tribe under a contract or agreement with the reporting title IV–E agency, or a private agency under an arrangement with the reporting title IV–E agency. We believe this modification will address commenter concerns. In addition, ACF will work with title IV–E agencies to develop valid response options for this element.

Number of siblings. In paragraph (c)(9), we propose for the first time in the adoption and guardianship assistance data file to require a title IV–E agency to indicate the number of siblings, if applicable, that a child has that are either (1) in the title IV–E agency's out-of-home care reporting population at any point during the report period, or (2) have a finalized adoption or legal guardianship and are under a title IV–E adoption or guardianship assistance agreement at any point during the report period. The child who is the subject of this record should not be included in this number. A sibling to the child is his or her brother or sister by biological, legal or marital connection. A title IV–E agency must report this information whether the child's adoptive or guardianship home is in or out-of-State or Tribal service area. If the child does not have siblings that are in out-of-home care or under a title IV–E adoption or guardianship assistance agreement, the title IV–E agency must indicate ''0.'' If a child does not have any siblings, we propose that the title IV–E agency must indicate ''not applicable'' for this data element.

We are interested in proposing that the title IV–E agency report on a child's siblings in paragraphs (c)(9) through (c)(11) of this section in order to learn more about sibling group placement in adoption and guardianship homes, and to comply with the mandate in section 471(a)(31)(A) of the Act. Under this statutory provision, the title IV–E agency must make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship or adoptive placement, unless such a placement is contrary to the safety or well-being of any of the siblings. We propose paragraph (c)(9) specifically to determine the total number of siblings which ACF will use to ensure correct data entry in paragraphs (c)(10) and (c)(11). This proposal complements our proposal pertaining to collection of information on sibling groups in the out-of-home care data file.

Siblings in out-of-home care. In paragraph (c)(10), we propose for the first time to require a title IV–E agency to collect and report the child record number(s) of siblings who are in the out-of-home care population and are placed in the child's adoptive or guardianship home at any point during the report period. In this section, the sibling's foster home must be the same as the child's adoptive or guardianship home. A title IV–E agency must report this information whether the child's living arrangement is in or out-of-State or Tribal service area. The record number of the child who is the subject of this record should not be reported. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. If no siblings in the out-of-home care population reside with the child during the report period, the title IV–E agency must leave this data element blank.

Siblings in adoption/guardianship. In paragraph (c)(11), we propose for the first time to require a title IV–E agency to collect the child record numbers of siblings who also have a finalized adoption or legal guardianship, are under a title IV–E adoption or guardianship assistance agreement and are living with the child in an adoptive or guardianship home at any point during the report period. The record number of the child who is the subject of this record should not be reported. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. If the child does not live with siblings with finalized adoptions or legal guardianships that are under title IV–E assistance agreements in the adoptive or guardianship home, the title IV–E agency must leave this data element blank.

Agreement termination date. In paragraph (c)(12), we propose that a title IV–E agency report the date that an adoption or guardianship assistance agreement was terminated or expired during the report period. This data element is not required in the existing AFCARS.

Typically, title IV–E adoption or guardianship assistance agreements continue until the child is age 18, or age 21 if the adopted child has a mental or physical handicap which warrants the continuation of assistance. However, Public Law 110–351 amended sections 475(8)(B)(i)(II) and (III) of the Act to allow title IV–E agencies the option to select an age up to age 21 for extended eligibility for all title IV–E programs, including adoption and guardianship assistance.

The only difference between the 2008 NPRM proposal and our current proposal is that we now include the end dates for title IV–E guardianship assistance agreements, per the revised adoption and guardianship assistance reporting population described in section 1355.41. We received one public

comment in response to the 2008 NPRM that indicated that a title IV–E agency may not collect adoption assistance agreement end dates explicitly, as most of the adoption assistance agreements terminate on the child's 18th birthday. That may have been true in 2008, however given the extended assistance option in section 475(8)(B) of the Act we cannot presume that most adoption and guardianship agreements will terminate when the child reaches age 18. We propose to collect the end dates for title IV–E adoption and guardianship assistance agreements because combined with the child's date of birth they will allow us to calculate more accurately the number of children served under title IV–E agreements, as well as the incidence of dissolution of adoption and legal guardianships for children supported by the title IV–E programs.

Following the direction of the 2008 NPRM, we are not proposing to require a title IV–E agency to report the adopted child's special needs status separately as required in current AFCARS. In the current AFCARS we require a title IV–E agency to report whether it has determined that the child has special needs, and the primary factor (the child's race, age, membership in a sibling group or medical condition or disability) in this determination. We do not wish to retain this data element, for the reasons described in the 2008 NPRM.

Section 1355.45 Compliance

In section 1355.45, we propose the types of assessments we will conduct to determine the accuracy of a title IV–E agency's data, the data files which will be subject to these assessments, the compliance standards and the manner in which the title IV–E agency initially determined to be out of compliance can correct its data. This section also specifies how we propose to implement the statutory mandates of Public Law 108–145.

Public Law 108–145 added section 474(f) to the Act, which requires that ACF withhold certain funds from a title IV–E agency that ''failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 479.'' Although we recognize that the provisions related to AFCARS in section 479 of the Act were designed to bolster our authority to take financial penalties for noncompliance with AFCARS requirements, we did not believe that the statute on its face was clear enough to implement penalties immediately after its enactment. In ACYF–CB–IM–04–04, issued February 17, 2004, we notified title IV–E agencies that we would not implement the penalty structure in the statute until we published final regulations. Further, because we were in the midst of developing proposed rules that would change significantly the information that title IV–E agencies submit to AFCARS, we did not believe it prudent to implement a new penalty structure for the existing requirements in regulation.

This proposal is different from the current AFCARS regulations (section 1355.40(e) and Appendix E to part 1355) in that it applies the same compliance standards to both data files, expands the number of error types to include invalid data, cross-file errors and tardy transactions and creates a separate section to define the data file standards associated with timely submission and each error type defined in section 1355.45(b). This proposal is identical to that proposed in the 2008 NPRM with two revisions in section 1355.45(a). First, we propose to apply compliance standards to both the out-of-home care and adoption and guardianship assistance data files, whereas the 2008 NPRM subjected only the out-of-home care data file to compliance standards. Second, we propose to exempt certain populations in each data file from compliance determination, namely, for both data files, the population of children over age 18 and children in a legal guardianship under a title IV–E guardianship assistance agreement in the adoption and guardianship assistance data file.

Section 1355.45(a) Files Subject to Compliance

In paragraph (a), we propose that ACF determine whether a title IV–E agency's out-of-home care and adoption and guardianship assistance data files are in compliance with the requirements of section 1355.42 of this part and certain data file and data quality standards (described further below in paragraphs (c) and (d)). This proposal is similar to the current AFCARS requirements in that the proposed out-of-home care and adoption and guardianship assistance data files are subject to a compliance determination separately. In the 2008 NPRM we proposed that only the out-of-home care data file be subject to a compliance determination, primarily because there was no statutory mandate to request information on guardianship agreements. We propose to now include the adoption and guardianship assistance data file in the compliance determination, but propose several exemptions for children included in this data file, as described below. The law requires us to assure that the data submitted to us is reliable and consistent and authorizes us to utilize appropriate requirements and incentives to ensure that the system functions reliably (sections 479(c)(2) and (4) of the Act, respectively). We chose to fulfill these requirements by establishing specific standards for compliance, consistent with our current requirements (see Appendix E to part 1355) and those proposed in the 2008 NPRM. Although we received several comments to the 2008 NPRM in support of our proposal to exclude the adoption and guardianship data file from a compliance determination, we believe that since we are required by section 479(c)(3) of the Act to collect information on children in adoptions supported by title IV–E, it is appropriate to include this data file in our compliance determination process. We include exceptions, as described below, to exclude most of the children in optional title IV–E programs from compliance determination. We did not receive other comments on this approach in response to the 2008 NPRM or 2010 FR Notice, and therefore, do not believe there is a need to change this general approach.

We propose to exempt, in general, records related to a child in either data file whose 18th birthday occurred in a prior report period from a compliance determination as described in paragraph (e) of this section. However, in order to report full information for children on who we are statutorily required to collect information, the report period in which the child turns 18 will be subject to a compliance determination. Under this proposal, a child is exempted from a compliance determination because of age in each report period following that in which they turn 18 years of age, regardless of whether the title IV–E agency opts to adopt a revised definition of child per section 475(8)(B) of the Act. The primary reason that we are not subjecting records of these children to compliance determinations is because extended assistance is an option available under either the title IV–E plan (per section 475(8)(B) of the Act), or per the State's former AFDC plan.

We also propose to exempt from a compliance determination, described in paragraph (e) of this section, a child of any age in the adoption and guardianship assistance data file who is in a legal guardianship under a title IV–E guardianship assistance program agreement per section 473(d) of the Act. We are not subjecting records of these children to compliance determinations primarily because electing to implement a title IV–E guardianship assistance

program is at the option of the title IV–E agency (per section 473(d) of the Act). No penalties will be applied to this population.

Although we do not propose compliance standards and penalties for submitting data on children in the adoption and guardianship assistance data file who are in a legal guardianship under a IV–E guardianship assistance agreement and/or children in either data file whose 18th birthday occurred in a previous report period, this information is still important to ACF and title IV–E agencies and we will take other steps to ensure that title IV–E agencies submit quality data. In particular, we may require the title IV–E agency to create and meet the goals of an AFCARS program improvement plan, target technical assistance efforts to collecting and reporting this information and/or develop data quality utilities for these records that will allow a title IV–E agency to evaluate the quality of the data files before submitting to ACF. We welcome comments on this proposal.

Section 1355.45(b) Errors

In paragraph (b), we outline the definitions of errors in paragraphs (b)(1) through (b)(5) of this section and propose how we will identify those errors when we assess information collected in a title IV–E agency's out-of-home care data file (per section 1355.43) and adoption and guardianship assistance data file (per section 1355.44). This section is similar in approach to the 2008 NPRM proposal, however, we modified this proposal to apply the compliance standards to both the out-of-home care data file and adoption and guardianship assistance data file and to except certain optional populations from compliance determination, as described in paragraph (a). We did not receive any substantive comments to this proposed approach in the 2008 NPRM. Specific comments on error types are included in each paragraph below.

Missing data. In paragraph (b)(1), we propose to define ''missing data'' as instances where the data element is blank or missing when a response is required. The data element descriptions proposed in sections 1355.43 and 1355.44 identify the circumstances in which a blank or missing response may be acceptable. For example, the data elements regarding second foster parent information in section 1355.43(e) must be left blank if the title IV–E agency previously indicated that the first foster parent is single. In such cases, the blank response is not missing data.

This proposal is identical to that in the 2008 NPRM; yet, the definition of the term ''missing data'' we propose is more specific than is used in the existing AFCARS. AFCARS regulations currently define the term ''missing data'' to refer to both blank responses and invalid responses (discussed below). In the 2008 NPRM, we chose not to propose the existing definition in AFCARS to avoid the common confusion that only blank data is problematic, and we did not change the proposed definition here.

Finally, as described in the 2008 NPRM, we want to underscore that title IV–E agencies are not permitted to mask the fact that they have not obtained information by mapping it to a valid, but untrue, response option. This practice is not permitted as specified in the proposed section 1355.42(d), as it provides a misleading and inaccurate account of the characteristics and experiences of the reporting population. We did not receive comments on this proposal in response to the 2008 NPRM.

Invalid data. In paragraph (b)(2), we propose to define invalid data as any instance in which the response that the title IV–E agency provides does not match one of the valid responses or exceeds the possible range of responses described in proposed sections 1355.43 and 1355.44. These types of errors are not new. In the existing AFCARS, invalid data is known as ''out-of-range'' data. For example, if the response options for a data element are ''yes,'' ''no'' and ''abandoned,'' a title IV–E agency's response of ''unknown'' is invalid data for that data element. A revised definition for invalid data was first proposed in the 2008 NPRM and the proposal here is the same as that previously proposed. We did not receive any comments on this proposal in response to the 2008 NPRM, therefore we did not change our proposal. Further, in our experience, invalid data errors are easily remedied by title IV–E agencies.

Internally inconsistent data. In paragraph (b)(3), we propose to define internally inconsistent data as those data elements that fail a consistency check that is designed to validate the logical relationship between two or more data elements within a record. This proposal is the same as that proposed in the 2008 NPRM. For example, a response of ''permanency plan not established'' described in proposed section 1355.43(f)(1) and a date provided for the data element ''date of permanency plan'' described in proposed section 1355.43(f)(2) are internally inconsistent data. We will not attempt to determine which of the data elements is/are ''likely'' to be at fault, but will identify all data elements assessed by the specified internal consistency in error. We received several comments to the 2008 NPRM requesting that ACF include the list of internal consistency checks in this NPRM. We have chosen not to promulgate the internal consistency checks through notice and comment rulemaking so as to provide maximum flexibility to change them as needed. We will, however, notify title IV–E agencies officially of the internal consistency checks. This approach is consistent with that taken with the NYTD compliance checks.

As described in the 2008 NPRM, these types of errors are not new and there are currently internal consistency validations outlined in the existing AFCARS. However, we have found that the existing internal consistency checks, while providing an important first step to quality data, are not extensive enough. Unfortunately, there are a number of occasions where a title IV–E agency's data pass all the existing internal consistency checks, but upon further analysis, ACF and the title IV–E agency discover that the data provides an inaccurate and unreliable picture of children in foster care in the title IV–E agency's placement and care responsibility. Based on our experience in AFCARS reviews and technical assistance, we believe that more internal consistency checks, along with other assessments to uncover errors, will provide us with more reliable and consistent data that we can publicize and use for our program activities with a higher degree of confidence.

Cross-file errors. In paragraph (b)(4), we propose a new type of data error known as cross-file errors. This error type was first proposed in the 2008 NPRM, and remains the same as that proposal. To determine whether cross-file errors occur, we propose to conduct a check to evaluate the data file for illogical and/or improbable patterns of recurrent response options across all applicable records within the out-of-home care or adoption and guardianship assistance data files. For example, if all children have the same date of birth in the out-of-home care data file, this is clearly a cross-file error. We received comments from the 2008 NPRM that indicated concern over increased workload and burden as a result of incorporating cross-file checks into the mapping of information to AFCARS data elements and preparation of AFCARS data files for submission. We considered these comments carefully, and as is the current practice we will provide title IV–E agencies with tools and assistance to conduct these checks. We anticipate that the burden will be

minimal, as the extraction code does not need to include these checks as it should be pulling data that have already been checked on an on-going basis via other means prior to submission of the AFCARS files. In addition, the agency's information system should already have certain edits incorporated into data fields to prevent the entry of invalid data. We ultimately believe that adding cross-file checks will assist title IV–E agencies and ACF in improving the quality of AFCARS data and may eventually reduce burden. As with the internal consistency checks, we will share with title IV–E agencies the specific cross-file checks.

Cross-file checks are not a part of the existing AFCARS compliance assessments, but are a part of the Data Quality Utility. We propose to evaluate a title IV–E agency's data files for cross-file errors to address some common problems identified in AFCARS assessment reviews. Often these problems are a result of underlying issues in the programming of the title IV–E agency's information system as opposed to data entry errors.

Tardy transactions. In paragraph (b)(5), we propose to define tardy transactions as a title IV–E agency's failure to record a child's removal and exit dates in the out-of-home care data file (sections 1355.43(d)(2) and (g)(2), respectively) within 30 days of those events occurring. Assessing a title IV–E agency's data file for tardy transactions is consistent with the existing AFCARS requirements, and also was proposed in the 2008 NPRM. We received comments to the 2008 NPRM suggesting that the 15-day timeframe was patently unreasonable and, as these dates cannot be corrected, could potentially also be counted as an error in subsequent submittals. We considered these comments, and we modified our proposal to allow a title IV–E agency 30 days to enter transaction dates before considering them 'tardy,' as opposed to the 15-day timeframe proposed in the 2008 NPRM. We continue to believe that ensuring a title IV–E agency's timely entry of removal and exit dates is critical to quality data. Additionally, as is the current practice in AFCARS, these errors are only assessed once. So, if the date was not entered in a timely manner, it will be assessed out of compliance for the report period the event occurred only and will not be re-assessed in the next and future report periods.

Section 1355.45(c) Data File Standards

In paragraph (c), we propose a set of file submission standards for ACF to determine that the title IV–E agency's AFCARS is in compliance. These are minimal standards for timeliness, formatting and quality information that the title IV–E agency must achieve in order for us to process the title IV–E agency's data appropriately. This proposal is similar to the 2008 NPRM proposal, but is modified to apply data file standards to both the out-of-home care data file as well as the adoption records in the adoption and guardianship assistance data file. Several additional changes are incorporated into this proposal that were not included in the 2008 NPRM, which will be addressed in each of the paragraphs below.

Timely submission. In paragraph (c)(1), we propose that the title IV–E agency submit both AFCARS data files (*i.e.,* out-of-home care and adoption and guardianship assistance) according to the report periods and timeline (*i.e.,* within 30 days of the end of each six-month report period) as described in section 1355.42(a). This proposal differs from both the existing AFCARS requirements, which allow 45 days for submission, and the proposal in the 2008 NPRM, which reduced the timeframe for submission to 15 days. We received numerous comments that indicated concern about the 15-day submission timeframe proposed in the 2008 NPRM, and in response to these comments, we modified the timeframe to allow title IV–E agencies up to 30 days to submit their AFCARS data files. Since the file creation is an automated process and data accuracy should be incorporated into an agency's quality assurance process and evaluated on an on-going basis, we believe that the 30-day time frame is an adequate one to pull the file and ensure there are no transmission errors before the last day of the report period. This is not a time for the agency to begin assessing the accuracy and quality of the data that has been entered into the information system.

Proper format. In paragraph (c)(2), we propose that a title IV–E agency send us its data files in a format that meets our specifications, and submit 100 percent error-free data on limited basic demographic information on the child. This requirement was first proposed in the 2008 NPRM, and is revised in this proposal to apply formatting specifications to both AFCARS data files, as well as to exempt certain optional populations from these requirements, as described in section 1355.45(a). At this time we cannot outline the exact transmission method and/or formatting requirements for AFCARS data, other than specifying that submission of AFCARS data files must be via an electronic method, as previously explained in the discussion in section 1355.42(e). However, in our experience, improperly formatted data files contribute to inefficiencies in our ability to process data from title IV–E agencies.

In addition, we propose that the title IV–E agency submit 100 percent error-free data for eleven basic demographic data elements described in sections 1355.43(a)(1) through (a)(4), 1355.43(b)(1)(i) and (b)(2), 1355.44(a)(1) through (a)(3) and 1355.44(b)(1)(i) and (b)(2). These data elements describe the ''title IV–E agency name,'' ''report date,'' ''local agency,'' ''child record number,'' ''child's date of birth'' and ''child's gender'' in both the out-of-home care data file and adoption records in the adoption and guardianship assistance data file. The errors that may be applicable to these data elements are missing data, invalid data, cross-file errors and internally inconsistent data, as defined in sections 1355.45(b)(1) through (b)(4). This proposal is revised slightly from its description in the 2008 NPRM to include child demographic information for the adoption records contained in the adoption and guardianship assistance data file.

As we proposed in the 2008 NPRM, we propose to require that title IV–E agencies have no errors at all for these basic demographic data elements because they contain information that is readily available to the title IV–E agency and is essential to our ability to analyze the data and determine whether the title IV–E agency is in compliance with the remaining data standards. For example, the child's date of birth is information that all title IV–E agencies collect on children in foster care and would typically have in their information system. Without the child's date of birth, we cannot run some other internal consistency or cross-file checks. Moreover, we cannot, for example, look at the age stratification of children in out-of-home care or determine the mean age of children adopted from foster care. There were a number of commenters that opposed the 100 percent reporting requirement for basic demographic data elements outlined in the 2008 NPRM, citing concerns over cost, burden and value of information. We considered these comments, however, based on our experience with the existing AFCARS and with NYTD, we have found that problems in these data elements are often the result of minor errors that can be rectified easily. We therefore believe that a 100 percent compliance standard for these basic and critical data elements is appropriate.

Acceptable cross-file. In paragraph (c)(3), we propose that a title IV–E agency's data file must be free of any cross-file errors that exceed the acceptable thresholds, as defined by ACF, to be in compliance with the AFCARS requirements. This data file standard is not currently included in AFCARS requirements and was first proposed in the 2008 NPRM, and our proposal here is modified slightly to clarify that ACF will establish acceptable levels of cross-file errors for use in determining compliance in the out-of-home care data file and adoption records in the adoption and guardianship assistance data file with this requirement. As stated earlier, we believe that cross-file errors indicate a systemic problem with the title IV–E agency's reported data. Thus we cannot be confident that the information accurately reflects the title IV–E agency's reporting populations for the out-of-home care and/or adoption and guardianship assistance data files. Therefore, we believe it appropriate not to tolerate such errors in either the out-of-home care or adoption and guardianship assistance data files. We received no comments on this proposal in response to the 2008 NPRM.

Section 1355.45(d) Data Quality Standards

In paragraph (d), we propose a set of data quality standards for the title IV–E agency to be in compliance with AFCARS. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section, and focus on the quality of the data that a title IV–E agency provides. The data quality standards relate to missing data, invalid data and internally inconsistent data, as defined in error specifications per section 1355.45(b) and tardy transactions, as defined in paragraph (b)(5) of this section. No more than 10 percent total of the data for each data element in each of the title IV–E agency's out-of-home care or adoption and guardianship assistance data files may have these data errors to remain in compliance with the AFCARS standards. The numerical standard of 10 percent is consistent with the existing AFCARS standards, and also is similar to the 2008 NPRM proposal. We received a number of comments from the 2008 NPRM regarding this proposal, specifically concerns about applying this 10 percent standard to new data elements and suggestions for a phased-in approach to applying the data quality standards. We considered these comments, however, for reasons detailed below, we retain our proposal of a 10 percent standard for data quality.

As described in the 2008 NPRM, we considered decreasing the acceptable amount of errors permitted in the AFCARS data files to no more than five percent in order to ensure that we receive better quality data. As noted earlier, a number of public commenters and stakeholders have criticized the quality of AFCARS data. Although title IV–E agencies and ACF have made great strides in improving the quality of data over the past few years, we believe there is room for significantly more progress. Decreasing the acceptable threshold for compliance would be one avenue to compel title IV–E agencies to continue to improve their data. On the other hand, by increasing the number and breadth of the internal consistency checks and adding cross-file checks to the range of assessments that we perform on a title IV–E agency's data, we are setting a higher bar for compliance. Further, we acknowledge that by adding new data elements and applying compliance standards, including error specifications, to the adoption records in the adoption and guardianship assistance data file and requiring that the title IV–E agency report historical information for certain data elements, we are asking title IV–E agencies to report more information that will be subject to the compliance assessments, thereby increasing the likelihood of errors. We believe, therefore, that the most appropriate balance is to leave the numeric standard at 10 percent.

Section 1355.45(e) Compliance Determination and Corrected Data

In paragraph (e), we propose the methodology for determining compliance and a title IV–E agency's opportunity to submit corrected data where ACF has initially determined that the title IV–E agency's original submission does not meet the AFCARS standards. These data elements were proposed in the 2008 NPRM and are slightly modified in this proposal to include adoption records in the adoption and guardianship assistance data file in the compliance determination process, and exempt specific optional populations, as described in section 1355.45(a). The comments from the 2008 NPRM on this data element were mostly supportive, therefore our approach to compliance determination is the same.

In paragraph (e)(1), we propose that we first determine whether the title IV–E agency's out-of-home care data file and adoption records in the adoption and guardianship assistance data file meet the data file standards (*i.e.,* timely submission, proper format and acceptable cross-file) described in paragraph (c) of this section. Consistent with existing AFCARS practice, we will determine compliance for each data file separately, meaning that one data file may be determined compliant and the other data file determined not compliant. As stated earlier in the description of these standards, we believe that if a title IV–E agency's data file cannot meet the data file standards, the information contained therein is not useful. In particular, if the title IV–E agency does not meet the proper format standard, we cannot process the title IV–E agency's data files and determine if the data files meet the other standards.

In paragraph (e)(2), we propose that we will then determine whether the title IV–E agency's out-of-home care data file and the adoption records in the adoption and guardianship assistance data file separately meet the data quality standards described in paragraph (d) of this section, if the data file standards, described in paragraph (c), are satisfied. We will calculate the error rates for each data element to determine if any one of them exceeds the outlined data quality standards. This is the same process by which we calculate the error rates for existing AFCARS data files.

In paragraph (e)(3), we propose procedures for a title IV–E agency to submit a corrected data file(s) to ACF if the title IV–E agency's data file(s) does not initially meet the data file and data quality standards. If the title IV–E agency does not meet the data file standards or the data quality standards (with the exception of the standard for tardy transactions, which is discussed below), a title IV–E agency will have until the deadline for submitting data for the subsequent report period to make changes to the data and submit the corrected data file to ACF. This timeframe for the title IV–E agency to submit corrected data is mandated by section 474(f)(1) of the Act. However, if a title IV–E agency does not meet the data quality standard related to tardy transactions, the title IV–E agency may not 'correct' these dates. This is because according to the removal transaction date and exit transaction date data elements in sections 1355.43(d)(2) and 1355.43(g)(2) of the out-of-home care data file, these dates must be computer generated and non-modifiable to reflect the data entry date and cannot be modified. The title IV–E agency is not permitted to change an entered transaction date for these data elements, and since the law requires that a title IV–E agency have another opportunity to submit data files that meet the standards, ACF will look towards the

transaction date(s) in the title IV–E agency's next regularly submitted out-of-home care data file, rather than the corrected data file, to determine whether the title IV–E agency has achieved compliance.

For example, a title IV–E agency submits AFCARS data files for the report period ending March 31 on May 1 (due on April 30). ACF assesses the data files and notifies the title IV–E agency that the data files have not met the timely submission standard or the data quality standards for missing data and tardy transactions. The title IV–E agency must correct the data in the out-of-home care data file and the adoption records in the adoption and guardianship assistance data file so that missing data comprises no more than 10 percent of the applicable records in each data element and submit these corrected data files on time for the next submission by October 30. In addition, the title IV–E agency's data files for the report period ending September 30, also submitted on October 30, must meet the data quality standards related to the tardy transactions. If all of these conditions are met, and the corrected data files contain no new errors in excess of the standards, ACF can then determine the title IV–E agency's data submission in compliance with the AFCARS standards.

The title IV–E agency need not develop an actual corrective action plan that outlines how the title IV–E agency plans to comply with the data standards, as is required in other program improvement efforts in child welfare (*i.e.,* the current CFSR and title IV–E Eligibility Reviews). We believe that an actual plan is not necessary in this case, as we anticipate that the Federal system will identify the errors that caused the title IV–E agency's data to be in noncompliance. Furthermore, because the period in which a title IV–E agency may submit data is relatively short, we believe that engaging in a process to develop an action plan and seek ACF approval will only reduce the amount of time the title IV–E agency has to make actual improvements that may bring the title IV–E agency into compliance with the standards.

Section 1355.45(f) Noncompliance

In paragraph (f), we propose to determine that a title IV–E agency has not complied with the AFCARS requirements if the title IV–E agency either does not submit corrected out-of-home care and adoption and guardianship assistance data files, or does not submit corrected data files that meet the compliance standards in paragraphs (c) and (d) of this section. A title IV–E agency will not be found noncompliant for failure to collect data on, or errors in data pertaining to optional populations, specified in section 1355.45(a). This final determination of noncompliance means that ACF will withhold financial penalties as outlined in section 1355.46. We did not receive substantive comments on this section from the 2008 NPRM.

Section 1355.45(g) Other Assessments

In paragraph (g), we propose, as we did in the 2008 NPRM, that ACF may use other monitoring tools that are not explicitly mentioned in regulation to determine whether the title IV–E agency meets all AFCARS requirements. For example, we may wish to continue to conduct onsite reviews in some format to ensure proper data mapping or provide other technical assistance to ensure valid and quality data. We currently use this approach in AFCARS by conducting onsite assessment reviews of a title IV–E agency's process to submit AFCARS data, including validating that the information in case files is accurately portrayed in the AFCARS submission. Through these assessment reviews we have found that title IV–E agencies may be in compliance with the AFCARS data standards, but not in compliance with all the AFCARS requirements. For example, through the aforementioned error checks, which we expect to be conducted automatically upon receipt of the data, we cannot determine whether the title IV–E agency is submitting the entire or the correct reporting population. Commenters to the 2008 NPRM suggested that this section is too open-ended, and advocated for full disclosure of all proposed assessment types. However, through the assessment reviews, we have been able to provide title IV–E agencies with targeted technical assistance on how to meet all aspects of the AFCARS requirements. We have often heard from States that the onsite activities tailored to a title IV–E agency's system and programs are beneficial and provide the State with valuable technical assistance. Therefore, we want to reserve our ability to develop and conduct these and other monitoring activities for AFCARS, and do not want to tie ourselves to a particular approach which may need to change over time.

Section 1355.46 Penalties

In section 1355.46, we propose how ACF will assess and take penalties for a title IV–E agency's noncompliance with AFCARS requirements outlined in section 1355.45. The penalty structure we propose is consistent with section 474(f) of the Act, and is similar to that proposed in the 2008 NPRM. Commenters to the 2008 NPRM were opposed to ACF assessing penalties and suggested that we use incentives in lieu of or in combination with penalties or alternately, allow title IV–E agencies to reinvest funds to encourage data quality improvement. Commenters in response to the 2008 NPRM also suggested that we phase-in or delay enforcing the penalties. We considered these comments, however, Pub. L. 108–145 added paragraph (f) to section 474 of the Act which requires that the Department take specific fiscal penalties for a title IV–E agency's lack of compliance with AFCARS standards. There is no provision in this law for incentives or reinvestment. In addition, penalties have already been delayed since January 2002, when we discontinued withholding Federal funds for a title IV–E agency's failure to comply with AFCARS requirements (see ACYF–CB–IM–02–03) and in ACYF–CB–IM–04–04 we notified title IV–E agencies that we would not assess penalties until we issue revised final AFCARS regulations, the subject of this proposed rule. Title IV–E agencies have been aware of our proposed penalty structure since the 2008 NPRM; thus we encourage agencies to begin thinking about how the proposal will affect their AFCARS submissions.

Section 1355.46(a) Federal Funds Subject to a Penalty

In paragraph (a), we propose that the pool of funds that are subject to a penalty for noncompliance are the title IV–E agency's claims for title IV–E foster care administrative costs for the quarter in which the original data file is due (as opposed to the corrected data file). Therefore, ACF would assess the penalty on the title IV–E agency's claims for the third quarter of the Federal fiscal year for data files due on April 30, and on the first quarter of the Federal fiscal year for data files due on October 30. Such administrative costs are inclusive of claims for training, but would not include Statewide or Tribal Automated Child Welfare Information System (SACWIS/TACWIS) costs. We believe that this provision is consistent with the statutory language in section 474(f)(2) of the Act, which requires that the pool of funds subject to the penalty is the amount expended by the title IV–E agency for administration of foster care activities under the title IV–E plan approved under this part, meaning all title IV–E foster care administrative costs. Further, the law specifies that the pool be comprised of the title IV–E

agency's claims in the quarter that coincides with the report period deadline (*i.e.,* the first or third quarter of a fiscal year). This proposal is similar to that proposed in the 2008 NPRM, but is modified slightly to include claims for Tribal Automated Child Welfare Information Systems in the pool of funds that are subject to a penalty for noncompliance. This proposal also differs from the 2008 NPRM in that we are proposing to exclude SACWIS/TACWIS funding from the pool of funds subject to AFCARS penalties. We propose to exclude these funds because they support more than just the title IV–E foster care program (including State or Tribal programs not funded by title IV–E) and therefore have a broader benefit than the ''administration of all title IV–E foster care administrative costs'' as required in section 474(f)(2) of the Act.

Commenters in response to the 2008 NPRM expressed concerns to the proposal for this section over the assessment of penalties for completing various data elements. Specifically, commenters were concerned about the lack of implementation period in the 2008 NPRM proposal prior to the imposition of penalties, and the potential for title IV–E agencies to be penalized for not collecting data on new elements prior to the implementation of the final rule. We acknowledge these comments and intend to provide more specifics on implementation issues in the Final Rule after receiving and reviewing comments.

Section 1355.46(b) Penalty Amounts

In paragraph (b), we propose specific penalty amounts for noncompliance consistent with section 474(f)(2) of the Act. The statute specifies the amount of each penalty for noncompliance and requires that penalties continue until the title IV–E agency is able to meet the standards. It is possible that the calculated penalty amounts could be smaller than those in the existing regulation; however, a penalty that continues until a title IV–E agency's data file complies with the AFCARS standards provides an incentive for title IV–E agencies to correct their data in a timely manner. Our proposal for paragraphs (b)(1) and (2) is unchanged from the 2008 NPRM.

First six-month period. In paragraph (b)(1), we propose to assess a penalty in the amount of one sixth of one percent of the pool of Federal funds subject to a penalty once ACF determines the title IV–E agency is out of compliance with the AFCARS requirements according to section 1355.45(f). This penalty amount is specified per section 474(f)(2)(A) of the Act. Using fiscal year 2010 claims data, we estimate that penalties could range from $565 to $228,174 for a title IV–E agency's noncompliance with the standards in a single report period. We did not receive comments to the 2008 NPRM or 2010 FR Notice on this proposal; therefore we did not change our proposal.

Subsequent six month periods. In paragraph (b)(2), we propose to assess a penalty in the amount of one fourth of one percent of the pool of funds subject to a penalty, should the title IV–E agency's noncompliance continue in subsequent six-month periods. This penalty amount is also specified per section 474(f)(2)(B) of the Act. Using FY 2010 data, we estimate that the penalty for subsequent noncompliance could range from $1,413 to $570,434 per report period. Commenters to the 2008 NPRM asked for clarification on our proposal for assessing penalties in subsequent six month report periods. As in the 2008 NPRM, we propose now to assess penalties for a data file for each report period. For example, a data file submitted for the first six month report period would be assessed for compliance apart of the data file submitted for the second six month report period. If the data file that is submitted for the first six month report period is determined to be out of compliance, then a penalty based on paragraph (b)(1) of this section could be assessed, regardless of whether the data file submitted for the second six month report period is determined to be in compliance. Additionally, if that same data file continues to be determined out of compliance in subsequent corrective submissions, then the penalty described in paragraph (b)(2) of this section could be assessed.

Commenters to the 2008 NPRM also expressed concern that because we are proposing to require title IV–E agencies to submit longitudinal data files, it is possible that certain data elements that are not permitted to be corrected could forever subject a title IV–E agency to penalties for errors. While this scenario is possible, we believe it is unlikely in most cases. Section 1355.45(d) describes that the AFCARS data file(s) would need to be determined to be out of compliance for 10 percent of the data quality standards in each of the areas of missing data, invalid data, internally inconsistent data, and tardy transactions. Although there are few data elements that a title IV–E agency is not permitted to correct (for example the transaction dates in sections 1355.43(d)(2) and (g)(2)); even if multiple transactions are determined to be incorrect, this does not mean that the title IV–E agency would be determined to be out of compliance based on the 10 percent data quality standard. The title IV–E agency also has an opportunity after the initial period in which a penalty is assessed to correct other data elements that may be determined to be incorrect, therefore a title IV–E agency could, in the end, lower their error rate to not exceed the 10 percent data quality standard.

Section 1355.46(c) Penalty Reduction From Foster Care Funding

In paragraph (c), we propose to take an assessed penalty by reducing the title IV–E agency's title IV–E foster care funding following ACF's determination of noncompliance. Our proposal is unchanged from that described in the 2008 NPRM. Commenters to the 2008 NPRM expressed general opposition to our proposal to take the penalty amount from the agency's title IV–E foster care reimbursement. However, section 474(f)(2) of the Act is specific that the penalty must be assessed on the total amount expended by the title IV–E agency for administration of foster care activities under the title IV–E plan.

Section 1355.46(d) Appeals

In paragraph (d), we propose to provide the title IV–E agency with an opportunity to appeal a final determination that the title IV–E agency is out of compliance inclusive of accompanying financial penalties to the HHS Departmental Appeals Board (DAB). Since section 474(f) of the Act does not require any unique appeal rights or time frames regarding AFCARS requirements, all appeals must follow the DAB regulations in 45 CFR part 16. We did not receive comments to the 2008 NPRM on this proposal.

We propose not to retain language that was newly proposed in the 2008 NPRM that a title IV–E agency be liable for applicable interest on the amount of funds we penalize, in accordance with the regulations at 45 CFR 30.18. This language was added to the 2008 NPRM to be consistent with Department-wide regulations and policy on collecting debts owed to the Federal government, however, upon further consideration, we believe that the provision requiring ACF to offset a title IV–E agency's grant award in the amount of the penalty (section 1355.46(c)) makes the need for such language obsolete.

Appendices

We propose to remove all of the appendices to 45 CFR part 1355 because they contain provisions and charts that are being substantively altered or made

obsolete by the provisions of this NPRM.

Appendix A contains the data element definitions and instructions for the existing foster care file. We propose instead the out-of-home care data file at proposed section 1355.43. Appendix B contains the adoption data element definitions and instructions for the existing adoption data file. We propose instead that the adoption data file be deleted and information pertaining to adoption be incorporated into the out-of-home care data file at proposed section 1355.43(h). The adoption and guardianship assistance data file is proposed at section 1355.44. Appendix C contains existing technical file submission details. We explained in the discussion of section 1355.42(e) that we propose not to regulate file submission provisions. Appendix D contains the existing foster care and adoption data file layout and summary data file details. We explained in the discussion on section 1355.42(a) that we are eliminating the summary data files and explained in section 1355.42(e) that we are not regulating file layout. Appendix E contains the existing data standards. We propose instead data standards in proposed section 1355.45. We did not receive comments to the 2008 NPRM on this proposal.

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS

Category	Element	Response options	Section citation
General information	Title IV–E agency	Name	1355.43(a)(1)
	Report date	Date	1355.43(a)(2)
	Local agency	Name	1355.43(a)(3)
	Child record number	Number	1355.43(a)(4)
Child Information	Child's date of birth	Date	1355.43(b)(1)(i)
	Child born in the United States	Yes No.	1355.43(b)(1)(ii)
	Child's sex	Male Female.	1355.43(b)(2)
	Child's race:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(b)(3)(i)
	—Race—Asian	Yes No.	1355.43(b)(3)(ii)
	—Race—Black or African American	Yes No.	1355.43(b)(3)(iii)
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(b)(3)(iv)
	—Race—White	Yes No.	1355.43(b)(3)(v)
	—Race—Unknown	Yes No.	1355.43(b)(3)(vi)
	—Race—Abandoned	Yes No.	1355.43(b)(3)(vii)
	—Race—Declined	Yes No.	1355.43(b)(3)(viii)
	Child's Hispanic or Latino ethnicity	Yes No. Unknown. Abandoned. Declined.	1355.43(b)(4)
	Date of health assessment	Date	1355.43(b)(5)
	Timely health assessment	Yes No.	1355.43(b)(6)
	Health, behavioral or mental health conditions.	Child has a diagnosed condition. No exam or assessment conducted. Exam or assessment conducted and none of the conditions apply.. Exam or assessment conducted but results not received..	1355.43(b)(7)
	—Intellectual disability	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(i)
	—Visually impaired	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(ii)
	—Hearing impaired	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(iii)
	—Physically disabled	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(iv)
	—Anxiety disorder	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(v)
	—Childhood disorders	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(vi)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Learning disability	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(vii)
	—Substance use related disorder	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(viii)
	—Developmental disability	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(ix)
	—Other mental/emotional disorder	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(x)
	—Other diagnosed condition	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(xi)
	—Pregnant	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(xii)
	School enrollment	Elementary Secondary. Post-secondary education or training. College. Not school-age. Not enrolled.	1355.43(b)(8)
	Educational level	Not school-age Kindergarten. 1st grade. 2nd grade. 3rd grade. 4th grade. 5th grade. 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Post-secondary education or training. College.	1355.43(b)(9)
	Educational stability	Yes No.	1355.43(b)(10)
	—Proximity	Applies Does not apply.	1355.43(b)(10)(i)
	—District/zoning rules	Applies Does not apply.	1355.43(b)(10)(ii)
	—Residential facility	Applies Does not apply.	1355.43(b)(10)(iii)
	—Services/programs	Applies Does not apply.	1355.43(b)(10)(iv)
	—Child request	Applies Does not apply.	1355.43(b)(10)(v)
	—Parent/Legal Guardian request	Applies Does not apply.	1355.43(b)(10)(vi)
	—Other	Applies Does not apply.	1355.43(b)(10)(vii)
	Special education	IEP IFSP. Not applicable.	1355.43(b)(11)
	IDEA Qualifying disability:		
	—Developmental delay	Applies Does not apply.	1355.43(b)(12)(i)
	—Autism	Applies Does not apply.	1355.43(b)(12)(ii)
	—Hearing impairment (including deafness).	Applies Does not apply.	1355.43(b)(12)(iii)
	—Emotional disturbance	Applies Does not apply.	1355.43(b)(12)(iv)
	—Intellectual Disability	Applies Does not apply.	1355.43(b)(12)(v)
	—Orthopedic impairment	Applies Does not apply.	1355.43(b)(12)(vi)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Other health impairment	Applies Does not apply.	1355.43(b)(12)(vii)
	—Specific learning disability	Applies Does not apply.	1355.43(b)(12)(viii)
	—Speech and language impairment	Applies Does not apply.	1355.43(b)(12)(ix)
	—Traumatic brain injury	Applies Does not apply.	1355.43(b)(12)(x)
	—Visual impairments (including blindness).	Applies Does not apply.	1355.43(b)(12)(xi)
	—Other	Applies Does not apply.	1355.43(b)(12)(xii)
	Prior adoption(s)	Yes No. Abandoned.	1355.43(b)(13)
	Prior adoption date(s)	Date(s)	1355.43(b)(13)(i)
	Prior adoption type(s)	Foster care adoption within State or Tribal service area. Foster care adoption in another State or Tribal service area. Intercountry adoption. Other private or independent adoption.	1355.43(b)(13)(ii)
	Prior adoption jurisdiction(s)	Name	1355.43(b)(13)(iii)
	Prior guardianship(s)	Yes No. Abandoned.	1355.43(b)(14)
	Prior guardianship date(s)	Date(s)	1355.43(b)(14)(i)
	Prior guardianship type(s)	Foster care guardianship within State or Tribal service area. Foster care guardianship in another State or Tribal service area. Other private or independent guardianship.	1355.43(b)(14)(ii)
	Prior guardianship jurisdiction(s)	Name	1355.43(b)(14)(iii)
	Minor parent	Number	1355.43(b)(15)
	Child financial and medical assistance	Child has received support/assistance No support/assistance received.	1355.43(b)(16)
	—SSI or Social Security benefits	Applies Does not apply.	1355.43(b)(16)(i)
	—Title XIX Medicaid	Applies Does not apply.	1355.43(b)(16)(ii)
	—Title XXI SCHIP	Applies Does not apply.	1355.43(b)(16)(iii)
	—State/Tribal adoption assistance	Applies Does not apply.	1355.43(b)(16)(iv)
	—State/Tribal foster care	Applies Does not apply.	1355.43(b)(16)(v)
	—Child support	Applies Does not apply.	1355.43(b)(16)(vi)
	—Other	Applies Does not apply.	1355.43(b)(16)(vii)
	Title IV–E foster care during report period	Yes No.	1355.43(b)(17)
	Victim of sex trafficking prior to entering foster care.	Yes No.	1355.43(b)(18)
	—Report to Law Enforcement	Yes No.	1355.43(b)(18)(i)
	—Date	Date	1355.43(b)(18)(ii)
	Victim of sex trafficking while in foster care.	Yes No.	1355.43(b)(19)
	—Report to Law Enforcement	Yes No.	1355.43(b)(19)(i)
	—Date	Date	1355.43(b)(19)(ii)
Parent or legal guardian information.	Year of birth of first parent or legal guardian.	Date Abandoned.	1355.43(c)(1)(i)
	First parent or legal guardian born in the United States.	Yes No. Abandoned.	1355.43(c)(1)(ii)
	Year of birth of second parent or legal guardian.	Date Abandoned. Not applicable.	1355.43(c)(2)(i)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Second parent or legal guardian born in the United States.	Yes No. Abandoned. Not applicable.	1355.43(c)(2)(ii)
	Termination of parental rights petition	Date(s) Deceased.	1355.43(c)(3)(i)
	Termination of parental rights	Date(s)	1355.43(c)(3)(ii)
	Date of judicial finding of abuse or neglect	Date No date.	1355.43(c)(4)
Removal information	Date of child's removal	Date(s)	1355.43(d)(1)
	Removal transaction date	Date(s)	1355.43(d)(2)
	Environment at removal	Parent household Relative household. Legal guardian household. Justice facility. Medical/mental health facility. Other.	1355.43(d)(3)
	Authority for placement and care responsibility.	Court ordered Voluntary placement agreement. Not yet determined.	1355.43(d)(4)
	Child and family circumstances at removal:		
	—Runaway	Applies Does not apply.	1355.43(d)(5)(i)
	—Whereabouts unknown	Applies Does not apply.	1355.43(d)(5)(ii)
	—Physical abuse	Applies Does not apply.	1355.43(d)(5)(iii)
	—Sexual abuse	Applies Does not apply.	1355.43(d)(5)(iv)
	—Psychological or emotional abuse	Applies Does not apply.	1355.43(d)(5)(v)
	—Neglect	Applies Does not apply.	1355.43(d)(5)(vi)
	—Medical neglect	Applies Does not apply.	1355.43(d)(5)(vii)
	—Domestic violence	Applies Does not apply.	1355.43(d)(5)(viii)
	—Abandonment	Applies Does not apply.	1355.43(d)(5)(ix)
	—Failure to return	Applies Does not apply.	1355.43(d)(5)(x)
	—Caretaker's alcohol abuse	Applies Does not apply.	1355.43(d)(5)(xi)
	—Caretaker's drug abuse	Applies Does not apply.	1355.43(d)(5)(xii)
	—Child alcohol use	Applies Does not apply.	1355.43(d)(5)(xiii)
	—Child drug use	Applies Does not apply.	1355.43(d)(5)(xiv)
	—Prenatal alcohol exposure	Applies Does not apply.	1355.43(d)(5)(xv)
	—Prenatal drug exposure	Applies Does not apply.	1355.43(d)(5)(xvi)
	—Diagnosed condition	Applies Does not apply.	1355.43(d)(5)(xvii)
	—Inadequate access to mental health services.	Applies Does not apply.	1355.43(d)(5)(xviii)
	—Inadequate access to medical services.	Applies Does not apply.	1355.43(d)(5)(xix)
	—Child behavior problem	Applies Does not apply.	1355.43(d)(5)(xx)
	—Death of caretaker	Applies Does not apply.	1355.43(d)(5)(xxi)
	—Incarceration of caretaker	Applies Does not apply.	1355.43(d)(5)(xxii)
	—Caretakers significant impairment—physical/emotional.	Applies Does not apply.	1355.43(d)(5)(xxiii)
	—Caretaker's significant impairment—cognitive.	Applies Does not apply.	1355.43(d)(5)(xxiv)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Inadequate housing	Applies Does not apply.	1355.43(d)(5)(xxv)
	—Voluntary relinquishment for adoption.	Applies Does not apply.	1355.43(d)(5)(xxvi)
	—Child requested placement	Applies Does not apply.	1355.43(d)(5)(xxvii)
Living arrangement and provider information.	Date of living arrangement	Date(s)	1355.43(e)(1)
	Foster family home	Yes No.	1355.43(e)(2)
	Foster family home type:		
	—Licensed home	Applies Does not apply.	1355.43(e)(3)(i)
	—Therapeutic foster family home	Applies Does not apply.	1355.43(e)(3)(ii)
	—Shelter care foster family home	Applies Does not apply.	1355.43(e)(3)(iii)
	—Relative foster family home	Applies Does not apply.	1355.43(e)(3)(iv)
	—Pre-adoptive home	Applies Does not apply.	1355.43(e)(3)(v)
	—Kin foster family home	Applies Does not apply.	1355.43(e)(3)(vi)
	Other living arrangement type	Group home-family operated Group home-staff operated. Group home-shelter care. Residential treatment center. Child care institution. Child care institution-shelter care. Supervised independent living. Juvenile justice facility. Medical or rehabilitative facility. Psychiatric hospital. Runaway. Whereabouts unknown. Placed at home.	1355.43(e)(4)
	Private agency living arrangement	Private agency involvement No private agency involvement.	1355.43(e)(5)
	Location of living arrangement	Out-of-State or out-of-Tribal service area In-State or in-Tribal service area. Out-of-country. Runaway or whereabouts unknown.	1355.43(e)(6)
	Jurisdiction or country where child is living	Name	1355.43(e)(7)
	Number of siblings in out-of-home care	Number Not applicable.	1355.43(e)(8)
	Siblings placed together in out-of-home care.	Child record number(s)	1355.43(e)(9)
	Siblings in out-of-home care not living with child.	Child record number(s)	1355.43(e)(10)
	Number of siblings in an adoption or legal guardianship.	Number Not applicable.	1355.43(e)(11)
	Siblings in adoptive/guardianship placements living with child.	Child record number(s)	1355.43(e)(12)
	Siblings in adoptive/guardianship placements not living with child.	Child record number(s)	1355.43(e)(13)
	Number of children living with the minor parent.	Number	1355.43(e)(14)
	Marital status of the foster parent(s)	Married couple Unmarried couple. Separated. Single female. Single male.	1355.43(e)(15)
	Child's relationship to the foster parent(s)	Paternal grandparent(s) Maternal grandparent(s). Other paternal relative(s). Other maternal relative(s). Sibling(s). Non relative(s). Kin.	1355.43(e)(16)
	Year of birth for first foster parent	Date	1355.43(e)(17)
	Race of first foster parent:		

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(e)(18)(i)
	—Race—Asian	Yes No.	1355.43(e)(18)(ii).
	—Race—Black or African American	Yes No.	1355.43(e)(18)(iii).
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(e)(18)(iv).
	—Race—White	Yes No.	1355.43(e)(18)(v).
	—Race—Unknown	Yes No.	1355.43(e)(18)(vi).
	—Race—Declined	Yes No.	1355.43(e)(18)(vii).
	Hispanic or Latino ethnicity of first foster parent.	Yes No. Unknown. Declined.	1355.43(e)(19).
	Year of birth for second foster parent	Date	1355.43(e)(20)
	Race of second foster parent:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(e)(21)(i).
	—Race—Asian	Yes No.	1355.43(e)(21)(ii)
	—Race—Black or African American	Yes No.	1355.43(e)(21)(iii)
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(e)(21)(iv)
	—Race—White	Yes No.	1355.43(e)(21)(v)
	—Race—Unknown	Yes No.	1355.43(e)(21)(vi)
	—Race—Declined	Yes No.	1355.43(e)(21)(vii)
	Hispanic or Latino ethnicity of second foster parent.	Yes No. Unknown. Declined.	1355.43(e)(22)
	Sources of Federal assistance in living arrangement		
	—Title IV–E foster care	Applies Does not apply.	1355.43(e)(23)(i)
	—Title IV–E adoption subsidy	Applies Does not apply.	1355.43(e)(23)(ii)
	—Title IV–E guardianship assistance	Applies Does not apply.	1355.43(e)(23)(iii)
	—Title IV–A TANF	Applies Does not apply.	1355.43(e)(23)(iv)
	—Title IV–B	Applies Does not apply.	1355.43(e)(23)(v)
	—SSBG	Applies Does not apply.	1355.43(e)(23)(vi)
	—Chafee Foster Care	Applies Does not apply.	1355.43(e)(23)(vii)
	Independence Program	Does not apply.	
	—Other Federal source	Applies Does not apply.	1355.43(e)(23)(viii)
	Amount of payment	Dollar amount	1355.43(e)(24).
	Services provided in other living arrangements.	Yes No.	1355.43(e)(25)
	—Specialized education	Applies Does not apply.	1355.43(e)(25)(i)
	—Treatment	Applies Does not apply.	1355.43(e)(25)(ii)
	—Counseling	Applies Does not apply.	1355.43(e)(25)(iii)
	—Other services	Applies Does not apply.	1355.43(e)(25)(iv)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Permanency planning	Permanency plan	Reunify with parent(s) or legal guardian(s) Live with other relatives. Adoption. Guardianship. Planned permanent living arrangement. Permanency plan not established.	1355.43(f)(1)
	Date of permanency plan	Date(s)	1355.43(f)(2)
	Concurrent permanency planning	Concurrent permanency plan No concurrent permanency plan. Not applicable.	1355.43(f)(3)
	Concurrent permanency plan	Live with other relatives Adoption. Guardianship. Planned permanent living arrangement.	1355.43(f)(3)(i)
	Date of concurrent permanency plan	Date(s)	1355.43(f)(3)(ii)
	Reason for permanency plan change	Yes No.	1355.43(f)(4)
	—Not engaged in services	Applies Does not apply.	1355.43(f)(4)(i)
	—Lack of progress in reunification plan.	Applies Does not apply.	1355.43(f)(4)(ii)
	—Unable/incapable of caring for child permanently.	Applies Does not apply.	1355.43(f)(4)(iii)
	—Reunification appropriate	Applies Does not apply.	1355.43(f)(4)(iv)
	—Child preference	Applies Does not apply.	1355.43(f)(4)(v)
	—Adoption/guardianship appropriate	Applies Does not apply.	1355.43(f)(4)(vi)
	—Current foster care provider committed to permanency.	Applies Does not apply.	1355.43(f)(4)(vii)
	—Emancipation likely	Applies Does not apply.	1355.43(f)(4)(viii)
	Date of periodic review	Date(s)	1355.43(f)(5)
	Date of permanency hearing	Date(s)	1355.43(f)(6)
	Juvenile justice	Status offender Adjudicated delinquent. Both status offender and delinquent. Not applicable.	1355.43(f)(7)
	Caseworker visit dates	Date(s)	1355.43(f)(8)
	Caseworker visit location	Child's residence Other location.	1355.43(f)(9)
	Caseworker visit purpose	Assessment or case planning Placement of the child. Transportation. Court hearing.	1355.43(f)(10)
	Caseworker visit alone with child	Yes No.	1355.43(f)(11).
	Transition plan	Yes No. Not applicable.	1355.43(f)(12)
	—Housing	Applies Does not apply.	1355.43(f)(12)(i)
	—Health insurance	Applies Does not apply.	1355.43(f)(12)(ii)
	—Health care treatment decisions	Applies Does not apply.	1355.43(f)(12)(iii)
	—Education	Applies Does not apply.	1355.43(f)(12)(iv)
	—Mentoring and continuing support	Applies Does not apply.	1355.43(f)(12)(v)
	—Work force support and employment services.	Applies Does not apply.	1355.43(f)(12)(vi)
	Date of transition plan	Date	1355.43(f)(13)
General exit information	Date of exit	Date(s)	1355.43(g)(1)
	Exit transaction date	Date(s)	1355.43(g)(2)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	Exit reason	Not applicable Reunify with parent(s)/legal guardian(s). Live with other relatives. Adoption. Emancipation. Guardianship. Runaway or whereabouts unknown. Death of child. Transfer to another agency. Other.	1355.43(g)(3)
	Transfer to another agency	State title IV–E agency Tribal title IV–E agency. Indian Tribe or Tribal agency (non-IV–E). Juvenile justice agency. Mental health agency. Other public agency. Private agency.	1355.43(g)(4)
Exit to adoption and guardianship information.	Marital status of the adoptive parent(s) or guardian(s).	Married couple Unmarried couple. Single female. Single male.	1355.43(h)(1)
	Child's relationship to the adoptive parent(s) or guardian(s):		
	—Paternal grandparent(s)	Applies Does not apply.	1355.43(h)(2)(i)
	—Maternal grandparent(s)	Applies Does not apply.	1355.43(h)(2)(ii)
	—Other paternal relative(s)	Applies Does not apply.	1355.43(h)(2)(iii)
	—Other maternal relative(s)	Applies Does not apply.	1355.43(h)(2)(iv)
	—Sibling(s)	Applies Does not apply.	1355.43(h)(2)(v)
	—Kin	Applies Does not apply.	1355.43(h)(2)(vi)
	—Non-relative(s)	Applies Does not apply.	1355.43(h)(2)(vii)
	—Foster parent(s)	Applies Does not apply.	1355.43(h)(2)(viii)
	Date of birth of first adoptive parent or guardian.	Date	1355.43(h)(3).
	Race of first adoptive parent or guardian:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(h)(4)(i)
	—Race—Asian	Yes No.	1355.43(h)(4)(ii)
	—Race—Black or African American	Yes No.	1355.43(h)(4)(iii)
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(h)(4)(iv)
	—Race—White	Yes No.	1355.43(h)(4)(v)
	—Race—Unknown	Yes No.	1355.43(h)(4)(vi)
	—Race—Declined	Yes No.	1355.43(h)(4)(vii)
	Hispanic or Latino ethnicity of first adoptive parent or guardian.	Yes No. Unknown. Declined.	1355.43(h)(5)
	Date of birth of second adoptive parent, guardian, or other member of the couple.	Date	1355.43(h)(6)
	Race of second adoptive parent, guardian, or other member of the couple:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(h)(7)(i)
	—Race—Asian	Yes No.	1355.43(h)(7)(ii)
	—Race—Black or African American	Yes No.	1355.43(h)(7)(iii)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(h)(7)(iv)
	—Race—White	Yes No.	1355.43(h)(7)(v)
	—Race—Unknown	Yes No.	1355.43(h)(7)(vi)
	—Race—Declined	Yes No.	1355.43(h)(7)(vii)
	Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	Yes No. Unknown. Declined.	1355.43(h)(8)
	Inter/Intrajurisdictional adoption or guardianship.	Interjurisdictional adoption or guardianship.. Intercountry adoption or guardianship. Intrajurisdictional adoption or guardianship.	1355.43(h)(9)
	Interjurisdictional adoption or guardianship jurisdiction.	Name	1355.43(h)(10)
	Adoption or guardianship placing agency	Title IV–E agency Private agency under agreement. Indian Tribe under contract/agreement.	1355.43(h)(11)

ATTACHMENT B—PROPOSED ADOPTION AND GUARDIANSHIP ASSISTANCE DATA FILE ELEMENTS

[* Title IV–E Only]

Category	Element	Response options	Section citation
General information	Title IV–E agency	Name	1355.44(a)(1)
	Report Date	Date	1355.44(a)(2)
	Child Record Number	Number	1355.44(a)(3)
Child Demographics	Child's date of birth	Date	1355.44(b)(1)(i)
	Child born in the United States	Yes No.	1355.44(b)(1)(ii)
	Child's sex	Male Female.	1355.44(b)(2)
	Child's race:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.44(b)(3)(i)
	—Race—Asian	Yes No.	1355.44(b)(3)(ii)
	—Race—Black or African American	Yes No.	1355.44(b)(3)(iii)
	—Race—Native Hawaiian or other Pacific Islander.	Yes No.	1355.44(b)(3)(iv)
	—Race—White	Yes No.	1355.44(b)(3)(v)
	—Race—Unknown	Yes No.	1355.44(b)(3)(vi)
	—Race—Abandoned	Yes No.	1355.44(b)(3)(vii)
	—Race—Declined	Yes No.	1355.44(b)(3)(viii)
	Hispanic or Latino Ethnicity	Yes No. Unknown. Abandoned. Declined.	1355.44(b)(4)
Adoption and guardianship assistance arrangement and agreement information.	Assistance agreement type	Title IV–E adoption assistance agreement. Title IV–E guardianship assistance agreement.	1355.44(c)(1)
	Adoption or guardianship subsidy amount	Dollar amount	1355.44(c)(2)
	Nonrecurring adoption or guardianship costs.	Costs paid No costs paid	1355.44(c)(3)
	Nonrecurring adoption or guardianship cost amount.	Dollar amount	1355.44(c)(4)
	Adoption or guardianship finalization date	Date	1355.44(c)(5)

ATTACHMENT B—PROPOSED ADOPTION AND GUARDIANSHIP ASSISTANCE DATA FILE ELEMENTS—Continued

[* Title IV–E Only]

Category	Element	Response options	Section citation
	Adoption or guardianship placing agency	Title IV–E agency Private agency under a contract/agreement. Indian Tribe. Private agency.	1355.44(c)(6)
	Inter/intrajurisdictional adoption or guardianship.	Interjurisdictional adoption or guardianship.. Intrajurisdictional adoption or guardianship	1355.44(c)(7)
	Interjurisdictional adoption or guardianship jurisdiction.	Name	1355.44(c)(8)
	Number of siblings	Number Not applicable.	1355.44(c)(9)
	Siblings in out-of-home care	Child record number(s)	1355.44(c)(10)
	Siblings in adoption/guardianship	Child record number(s)	1355.44(c)(11)
	Agreement termination date	Date	1355.44(c)(12)

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. In particular, we have determined that a regulation is the best and most cost effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and support other statutory obligations to provide oversight of child welfare programs. Moreover, we consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the costs to title IV–E agencies as a result of this rule will not be significant. At least half of the costs that States and Tribes will incur as a result of the revisions to AFCARS will be eligible for Federal financial participation. Depending on the cost category and each agency's approved plans for title IV–E and cost allocation, they may claim allowable costs as Automated Child Welfare Information System costs at the 50 percent rate, administrative costs for the proper and efficient administration of the title IV–E plan at the 50 percent rate, or training of agency staff at the 75 percent rate. We estimate that costs will be approximately $24 million annually for AFCARS for the first five years of implementation, half of which ($12 million) we estimate will be reimbursed by the Federal government as allowable costs under title IV–E. Additional costs to the Federal government to design a system to collect the new AFCARS data are expected to be minimal.

Alternatives Considered: We considered whether alternative approaches could better meet ACF, State, and Tribal needs, but decided that our current approach, as proposed, best meets these needs. First, we considered whether other existing data sets could yield similar information. We determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption or guardianship with the involvement of the State or Tribal title IV–E agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate.

We also considered whether we should permit title IV–E agencies to sample and report information on a representative population of children. We remain concerned, however, that there may be several significant limitations associated with using a sampling approach for collecting data on children who are in foster care, adoption and guardianship programs. If, under a sampling approach, ACF would be unable to collect reliable sample data for the title IV–E foster care eligibility reviews and the current CFSRs or respond to other initiatives such as the Annual Outcomes Report to Congress and Adoption Incentives using sampling data, the use of AFCARS data would be limited. Second, when using a sample, small population subgroups (*e.g.,* children who spend very long periods in foster care or children who get adopted or run away) might occur so rarely in the data that such that analysis on these subgroups would not be meaningful.

VII. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to State and Tribal title IV–E agencies.

VIII. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $146 million. This proposed rule does not impose any mandates on State, local or Tribal governments, or the private sector that will result in an annual expenditure of $100 million or more.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. ch. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This proposed rule contains information collection requirements in sections 1355.43, the out-of-home care data file and 1355.44, the adoption and guardianship assistance data file, that the Department has submitted to OMB for its review. In addition, the NPRM proposes to validate whether the title IV–E agency complies with the AFCARS data file and data quality standards

established in section 1355.45 by checking for errors in logic that mean that the data could not be accurate. However, these error checks are not information collection requirements themselves as they do not require the agency to produce, maintain or submit information to ACF, and so are not a part of the burden calculations. Rather, the error checks will be performed by ACF on each title IV–E agency's out-of-home care and adoption and guardianship assistance data files to validate that they are providing the data as specified in the data file requirements in section 1355.43. The error checks are not appended to this regulation as they are rather technical aspects of data reporting that cannot be completed until ACF issues a final rule that contains the required data elements.

Collection of information for AFCARS is currently authorized under OMB number 0970–0422; however, this NPRM significantly changes the collection requirements by adding longitudinal data requirements and additional data elements in the out-of-home care and adoption and guardianship assistance data files. We estimate that annual burden hours will increase to 568,749 from the currently approved 432,720 hours as a result of the proposed provisions in this NPRM and the inclusion of Tribal title IV–E agencies per section 479B of the Act.

The Department requires this collection of information to address the data collection requirements of section 479 of the Act. Specifically, the law requires the Department to develop a data collection system that can provide comprehensive national information on the demographic characteristics of adopted and foster children and their biological, foster or adoptive parents; the status of the foster care population; the number and characteristics of children placed in or discharged from foster care; children adopted or who have experienced adoption dissolution, and children who are placed in foster care outside of the State or Tribal service area which has placement and care responsibility and the extent and nature of assistance provided by government adoption and foster care programs and the characteristics of the children to whom such assistance is provided. Further, this information is critical to our efforts to: Assess a title IV–E agency's compliance with titles IV–B and IV–E of the Act and the current CFSRs (45 CFR 1355.31 through 1355.37), conduct title IV–E eligibility reviews (45 CFR 1356.71), implement the Adoption Incentive and Legal Guardianship Payments program at section 473A of the Act and for other program purposes previously outlined.

The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
1355.43 Out-of-home care data file	67	2	3,591.15	481,214
1355.44 Adoption and guardianship assistance data file	67	2	653.25	87,535
Total				568,749

We arrived at these estimates after taking into consideration the existing and anticipated foster care, adoption, and guardianship assistance populations; factoring in the increase of burden in accordance with this proposed rule and efficiencies in reporting and the anticipated amount of worker and information system staff time to collect and report the information.

PRA rules require that we estimate the total burden created by this NPRM regardless of what information is already available. Thus, these burden hours are higher than currently authorized by OMB, and may be an overestimate since we are unable to account for information title IV–E agencies currently collect for their own purposes, but ACF proposes to collect for the first time under this NPRM. Below we describe in detail how we arrived at the estimated burden.

Out-of-Home Care Data File Burden Estimate

1. Our first step in estimating the burden was to estimate the out-of-home care reporting population at the approximate time of implementation. We used information from FY 2012 AFCARS data (the most recent final data available) and applied the following assumptions:

- We assume that the proportion of children in title IV–E agencies with a State Automated Child Welfare Information System (SACWIS) versus non-SACWIS agencies will remain constant at roughly 85/15.
- We assume that the number of children entering the out-of-home care reporting population annually will rise slightly, given that the proposed out-of-home care reporting population now requires a title IV–E agency to continue reporting a child to AFCARS once he or she has entered foster care, regardless of subsequent living arrangements, and includes children whose whereabouts are unknown at the time the child was placed in the placement and care responsibility of the title IV–E agency. We believe this new out-of-home care reporting population will account for a minor increase in the number of children in the out-of-home care reporting population.
- We assume that the number of children who exit the out-of-home care reporting population annually will remain about the same as it is currently.
- We assume that children under the placement and care responsibility of a Tribal title IV–E agency will not represent a significant net increase in the number of children in the out-of-home care reporting population.

Based on AFCARS data from FY 2012, 397,122 children were in foster care on September 30, 2012. Therefore, we estimate the following annual caseload figures: 337,554 children served in SACWIS title IV–E agencies and 59,586 in non-SACWIS title IV–E agencies; 216,140 children with new entries into foster care in SACWIS title IV–E agencies, and 38,142 in non-SACWIS title IV–E agencies; 240,923 children will exit foster care, approximately 51,225 of whom will exit to adoption and 16,418 will exit to guardianship. We do not expect any of the Tribal title IV–E agencies to have Tribal versions of SACWIS (TACWIS) for several years and we do not expect the inclusion of Tribal title IV–E agencies will result in a significant net increase in the numbers of children in the out-of-home care reporting population.

2. Our second step in estimating the burden was to estimate the number of recordkeeping hours that workers will spend on meeting AFCARS requirements. We used information from our existing AFCARS collection approved by OMB as a foundation which includes the following assumptions:

• Recordkeeping will require more time in a non-SACWIS title IV–E agency than it does for a SACWIS one.

• Entering the applicable out-of-home care data elements for a child newly entering the out-of-home care reporting population will take approximately one hour for SACWIS agencies and 1.5 hours for non-SACWIS agencies.

• Updating the child's out-of-home care record on average will take 0.35 hours for SACWIS agencies and 0.50 hours for non-SACWIS ones annually.

• Workers will take approximately 0.10 hour to enter exit data for non-adoption/guardianship cases and an additional 30 minutes (0.60 hours total) for children exiting through adoption and guardianship.

• Recordkeeping may require slightly more time in a Tribal IV–E agency due to staff being unfamiliar with the procedures.

We multiplied the time spent on the various recordkeeping activities as outlined in this step by the number of children in foster care described above in step 1, and arrived at a total of 479,204 recordkeeping hours for all children in the out-of-home care reporting population annually.

3. Our third step in estimating the burden was to estimate the time spent on actually reporting the information (*e.g.,* submitting the out-of-home care data file). We used the following assumptions to develop the reporting hours estimate:

• We anticipate that title IV–E agencies will be using a technology such as XML to transmit the data and will need time to become familiar with and efficient in reporting their data in the first years of implementing the new procedures. This will increase the amount of time spent reporting.

• The proposed out-of-home care data file is comprised of many data elements that are currently in the existing foster care and adoption data files, but also additional data elements not currently in either existing data file. To accommodate the increased number of data elements (from both the current foster care and adoption data files) in the proposed out-of-home care data file, we anticipate that our estimate should be higher than the sum of the existing OMB-approved reporting burden hours of eight hours for the foster care data file and four hours for the adoption data file.

We estimate that the proposed changes to the out-of-home care data file will increase the reporting burden; *e.g.,* time spent submitting the file, by approximately 25 percent or by 3 hours, for a total of 15 hours. We then multiplied by 67 title IV–E agencies and two report periods with the 15 reporting burden hours, which results in an annual reporting burden of 2,010 hours. The 67 title IV–E agencies are 52 State title IV–E agencies plus the approximately 15 Tribal title IV–E agencies we have estimated will operate title IV–E programs over time pursuant to section 479B of the Act.

4. Finally, we calculated the total annual burden hours for the out-of-home care data file as 481,214 hours (479,204 total annual recordkeeping burden + 2,010 annual reporting burden = 481,214.)

Dividing this national and annual figure by the 67 title IV–E agencies and two semi-annual report periods, we arrive at approximately 3,591.15 burden hours per respondent per 6 month report period for the out-of-home care data file. ((481,214 ÷ 67 title IV–E agencies) ÷ 2 report periods = 3,591.15 burden hours per respondent per 6 month report period.)

Adoption and Guardianship Assistance File Burden Estimate

1. We first estimated the annual burden associated with the title IV–E adoption assistance data elements.

• Data from the Title IV–E Programs Quarterly Financial Report, CB–496, for FY 2013 indicate 417,530 children receiving title IV–E adoption assistance. As a result of the changes in title IV–E adoption assistance eligibility included in section 473(e) of the Act, as amended by Pub. L. 110–351, we expect the percentage of children eligible for title IV–E adoption assistance will increase until FY 2018 when virtually all will be title IV–E eligible.

• We expect workers to spend 0.2 hours annually recording data in accordance with this NPRM on each child under a title IV–E adoption assistance agreement. Most information collected in the adoption and guardianship assistance data file is basic demographics and is static or can be easily found on the child's title IV–E assistance agreement. Most title IV–E adoption assistance agreements are updated or changed on an annual or biennial basis, unless the family circumstances change, requiring small amounts of recordkeeping.

• We calculate recordkeeping for title IV–E adoption assistance information to take approximately 83,506 hours (0.2 hours × 417,530 children).

2. We then estimated the annual burden associated with the title IV–E guardianship assistance data elements.

• The title IV–E guardianship assistance program is an optional program that any title IV–E agency may choose to make available at any point. For FY 2013, there were 12,537 children receiving title IV–E guardianship assistance payments with 26 title IV–E agencies reporting (CB–496). We project that the numbers of children receiving title IV–E guardianship assistance payments will continue to increase as more title IV–E agencies opt to provide title IV–E guardianship assistance payments.

• Most information collected in the adoption and guardianship assistance data file is basic demographics and is static or can be easily found on the child's title IV–E assistance agreement. Further, most title IV–E guardianship assistance agreements are updated or changed on an annual or biannual basis, unless family circumstances change, requiring small amounts of recordkeeping. However, title IV–E agencies will differ in their experience with collecting data on children under title IV–E guardianship assistance agreements and some may need more time to gather the necessary information. For that reason, we are increasing our estimate for this recordkeeping over the estimate for the title IV–E adoption assistance data elements to approximately 0.3 hours annually.

• We calculate recordkeeping for the title IV–E guardianship assistance information to take approximately 3,761 burden hours (0.3 hours × 12,537 children). As is the case with all estimates in this section, we welcome comments on these assumptions and estimates.

3. In addition, we estimate that burden associated with actually reporting the adoption and guardianship assistance data file to ACF will take each title IV–E agency 2 hours each report period to complete the work necessary to submit the file. We then multiplied 67 title IV–E agencies and two report periods with the 2 reporting burden hours, which results in an annual reporting burden of 268 hours. (67 title IV–E agencies × 2 report periods × 2 burden hours = 268 total reporting burden hours annually.)

4. Finally, we calculated the total annual burden hours for the adoption and guardianship assistance data file as 87,267 hours by combining the total recordkeeping (83,506 + 3,761 = 87,267) and the reporting burden hours (268). (87,267 + 268 = 87,535 total annual burden hours.) Dividing this national total by the 67 title IV–E agencies and two 6 month report periods we arrive at approximately 653.25 burden hours per respondent per 6 month report period. ((87,535 ÷ 67 title IV–E agencies) ÷ 2 report periods = 653.25 burden hours

per respondent per 6 month report period.)

We have used the total cost and total burden hour estimates to provide additional detail on projected average cost for each State and Tribal title IV–E agency implementing the changes described in this NPRM. Our estimates are as follows:

Total reporting burden	568,749 hours.
Total cost	$17,062,470 (50% reimbursable).
Average hourly labor rate	$30.
Number of respondents	67.
Net average cost per respondent	$127,332.

In making the above estimates, we want to acknowledge: (1) We have used average figures for title IV–E agencies of very different sizes and (2) these are rough estimates of the burden on Tribal title IV–E agencies because they have not operated AFCARS previously and we have limited information to use in making these estimates. We welcome comments on these factors and all others in this section.

ACF will consider comments by the public on this proposed collection of information in the following areas:

1. Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

2. Evaluating the accuracy of ACF's estimate of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhancing the quality, usefulness, and clarity of the information to be collected; and

4. Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by email to *OIRA_submission@omb.eop.gov.* Please mark faxes and emails to the attention of the desk officer for ACF.

X. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

XI. Assessment of Federal Regulations on Policies and Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the law.

XII. Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

XIII. Tribal Consultation Statement

ACF published a **Federal Register** notice on July 23, 2010 (75 FR 43187) requesting public comment and notifying the public of opportunities to meet with ACF to provide comments in person or in writing to inform development of a new NPRM on AFCARS. ACF conducted four in-person consultation sessions in the ACF Regions, two webinars and two sessions at a national conference held in Washington, DC that were attended by States and Tribes. We received comments from Tribal commenters, many of which either recommended collection of information outside the scope of AFCARS or voiced concerns relating to the implementation of AFCARS in Tribal title IV–E agencies. Specifically, several commenters expressed the desire that any requirement to participate in AFCARS be delayed for Tribal title IV–E agencies, the concern over duplication of data when Tribal cases are transferred from the State title IV–E agency to the Tribal title IV–E agency, and concern over the cost implications of requiring both additional data elements and a data collection system for Tribal title IV–E agencies. Some Tribal commenters requested that ACF include additional data elements in AFCARS that would track information gleaned about a child's needs from caseworker visits. We believe that this is addressed by a number of data elements in our proposal aimed at enhancing the information we receive about a child's needs and caseworker visits (*e.g.,* Health, behavioral or mental health conditions of the child in section 1355.43(b)(7) and special education in section 1355.43(b)(11), circumstances of removal in section 1355.43(d)(5), and caseworker visits in section 1355.43(f), among others). Another Tribal commenter requested other additional data elements to provide a comprehensive picture of the well-being of Tribal children including: Elements to identify whether a child is a member of an Indian Tribe and the name of the Indian Tribe of which the child is a member, data on Tribal notification, data on whether a Tribal title IV–E agency intervened in a State title IV–E agency case, cultural activities that the child is participating in while away from his or her parents, judicial findings of active efforts, and preferential treatment for Tribal placement resources. Finally, one Tribal commenter thought child welfare services provided in a detention setting should be reported to AFCARS regardless of where the child was placed. All comments and concerns submitted by Tribal commenters were considered in the development of this NPRM.

Several Indian Tribes responded with suggestions for including additional data elements in AFCARS specifically on the Indian Child Welfare Act of 1978 (ICWA), Pub. L. 95–608, and its impact on Tribal children. ICWA was passed in response to concerns about the large number of Indian children who were being removed from their families and Indian Tribes and the failure of States to recognize the culture and Tribal relations of Indian people. However, ICWA is outside ACF's purview,

therefore we do not have the authority to collect specific data on ICWA implementation and compliance, instruct States and Indian Tribes on how to meet its requirements, or provide additional guidance. Therefore, we are not able to make these changes or additions to the AFCARS data elements in the proposed rule as requested by commenters. We are committed to working with Tribal title IV–E agencies to address implementation issues that arise under title IV–E programs and providing technical assistance to help them implement AFCARS.

Generally, there is support from the Tribal commenters to issue this regulation, even in the face of building an information system. We value the comments we have received from Tribal representatives and believe that the comments will enhance the new AFCARS requirements for Tribal title IV–E agencies, as well as State title IV–E agencies. Throughout this NPRM we have outlined our need to issue new requirements for AFCARS so that we can support longitudinal data and additional data elements that will drastically increase our tracking and knowledge of children who enter foster care and who exit to adoption or legal guardianship. We believe that our proposal to enhance AFCARS will expand and enrich our knowledge about children who are in the placement and care responsibility of Tribal title IV–E agencies, which is a benefit to not only Indian Tribes but also State and Federal governments that oversee child welfare programs.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: January 12, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: January 27, 2015.

Sylvia M. Burwell,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 45 U.S.C. 620 *et seq.* 42 U.S.C. 670 *et seq.,* 42 U.S.C. 1302.

■ 2. Revise § 1355.40 to read as follows:

§ 1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System.

(a) This section applies to State and Tribal title IV–E agencies.

(b) An agency described in paragraph (a) of this section must collect information on the characteristics and experiences of a child in the reporting populations described in § 1355.41. The title IV–E agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption and guardianship assistance data file as required in § 1355.42, pertaining to information described in §§ 1355.43 and 1355.44.

■ 3. Add §§ 1355.41 through 1355.46 to read as follows:

§ 1355.41 Reporting populations.

(a) *Out-of-home care reporting population.* (1) A title IV–E agency must report a child of any age who is in out-of-home care. The out-of-home care reporting population includes a child in the following situations:

(i) A child in foster care as defined in § 1355.20.

(ii) A child under the placement and care responsibility of another public agency that has an agreement with the title IV–E agency pursuant to section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium with which the title IV–E agency has an agreement or contract and on whose behalf title IV–E foster care maintenance payments are made.

(iii) A child who runs away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV–E agency.

(2) Once a child enters the out-of-home care reporting population, the child remains in the out-of-home care reporting population through the end of the report period in which the title IV–E agency's placement and care responsibility ends, regardless of any subsequent living arrangement.

(3) For AFCARS purposes, an out-of-home care episode is defined as the period between when a child enters the out-of-home care reporting population, as described in paragraph (a)(1) of this section, and when the title IV–E agency's placement and care responsibility ends.

(b) *Adoption and guardianship assistance reporting population.* (1) The title IV–E agency must include in the adoption and guardianship assistance reporting population any child who is:

(i) In a finalized adoption under a title IV–E adoption assistance agreement pursuant to section 473(a) of the Act with the reporting title IV–E agency that is or was in effect at some point during the current report period; or

(ii) In a legal guardianship under a title IV–E guardianship assistance agreement pursuant to section 473(d) of the Act with the reporting title IV–E agency that is or was in effect at some point during the current report period.

(2) A child remains in the adoption or guardianship assistance reporting population through the end of the report period in which the title IV–E agreement ends or is terminated.

§ 1355.42 Data reporting requirements.

(a) *Report periods and deadlines.* There are two six-month report periods based on the Federal fiscal year: October 1 to March 31 and April 1 to September 30. The title IV–E agency must submit the out-of-home care and adoption and guardianship assistance data files to ACF within 30 days of the end of the report period (*i.e.,* by April 30 and October 30). If the reporting deadline falls on a weekend, the title IV–E agency has through the end of the following Monday to submit the data file.

(b) *Out-of-home care data file.* A title IV–E agency must report the information required in § 1355.43 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV–E agency must report the most recent information for the applicable data elements in § 1355.43(a) and (b).

(2) Except as provided in paragraph (b)(3) of this section, the title IV–E agency must report the most recent information and all historical information for the applicable data elements described in § 1355.43(c), (d), (e), (f), (g) and (h).

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.41(a) prior to the effective date of this section, the title IV–E agency must report the information for the data elements described in § 1355.43(d)(1), (g)(1) and (g)(3) for the out-of-home care episode(s) that occurred prior to the effective date of the final rule.

(c) *Adoption and guardianship assistance data file.* A title IV–E agency must report the most recent information for the applicable data elements in § 1355.44 that pertains to each child in the adoption and guardianship assistance reporting population on the last day of the report period.

(d) *Reporting missing information.* If the title IV–E agency fails to collect the information for a data element, the title

IV–E agency must report the element as blank or otherwise missing. The title IV–E agency is not permitted to default or map information that was not collected and is missing to a valid response option.

(e) *Electronic submission.* The title IV–E agency must submit the required data files electronically according to ACF's specifications.

(f) *Record retention.* The title IV–E agency must retain all records necessary to comply with the data requirements in §§ 1355.42 through 1355.44. The title IV–E agency's retention of such records is not limited to the requirements of 45 CFR 92.42(b) and (c).

§ 1355.43 Out-of-home care data file elements.

(a) *General information.* (1) *Title IV–E agency.* Indicate the name of the title IV–E agency responsible for submitting the AFCARS data to ACF.

(2) *Report date.* The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

(3) *Local agency.* Indicate the name of the local county, jurisdiction or equivalent unit that has primary responsibility for the child.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV–E agency in out-of-home care and across all report periods and episodes. The title IV–E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) *Child information.* (1)(i) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' A date of birth that results in a child age of 22 years or more is an invalid response.

(ii) *Child born in the United States.* Indicate whether the child was born in the United States. If the child was born in the United States, indicate ''yes.'' If the child was born in a country other than the United States, indicate ''no.''

(2) *Child's sex.* Indicate whether the child is ''male'' or ''female,'' as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child, the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(3)(i) through (b)(3)(viii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The child or parent or legal guardian does not know or is unable to communicate the race, or at least one race of the child.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(viii) *Race—declined.* The child or parent(s) or legal guardian(s) has declined to identify a race.

(4) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the child or the child's parent(s) or legal guardian(s) does not know or is unable to communicate whether the child is of Hispanic or Latino ethnicity, indicate ''unknown.'' If the child is abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate ''declined.''

(5) *Date of health assessment.* Indicate the month, day, and year of the child's most recent health assessment. This assessment could include an initial health screening, or any follow-up health screening that the title IV–E agency has scheduled for a child in a foster care placement, as required by section 422(b)(15)(A) of the Act. If the child has not received a health assessment, the title IV–E agency must leave this paragraph blank.

(6) *Timely health assessment.* Indicate whether the child has been receiving health assessments within the timeframes for initial and follow-up health screenings established by the title IV–E agency, as required by section 422(b)(15)(A) of the Act. Indicate ''yes'' if the child has received all initial or follow-up health assessments before or on the due date(s) for such assessments as of the end of the report period. Indicate ''no'' if the child is currently not meeting the timeline for health assessments established by the title IV–E agency. If a child has not received a health assessment during the report period, the title IV–E agency must leave this paragraph blank.

(7) *Health, behavioral or mental health conditions.* Indicate whether the child was diagnosed by a qualified professional, as defined by the State or Tribe, as having a health, behavioral or mental health condition listed below, prior to or during the child's current out-of-home care episode as of the last day of the report period. Indicate ''child has a diagnosed condition'' if a qualified professional has made such a diagnosis and for each element described in paragraphs (b)(7)(i) through (xii) of this section indicate ''existing condition,'' ''previous condition'' or ''does not apply,'' as applicable. Indicate ''no exam or assessment conducted'' if a qualified professional has not conducted a medical exam or assessment of the child. Indicate ''exam or assessment conducted and none of the conditions apply'' if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed below. Indicate ''exam or assessment conducted but results not received'' if a qualified professional has conducted a medical exam or assessment but the title IV–E agency has

not yet received the results of such an exam or assessment.

(i) *Intellectual disability.* The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child's socialization and learning.

(ii) *Visually impaired.* The child has, or had previously, a visual impairment that may significantly affect educational performance or development.

(iii) *Hearing impaired.* The child has, or had previously, a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

(iv) *Physically disabled.* The child has, or had previously, a physical condition that adversely affects the child's day-to-day motor functioning, including, but not limited to, cerebral palsy, spina bifida, multiple sclerosis, muscular dystrophy, orthopedic impairments and other physical impairments.

(v) *Anxiety disorder.* The child has, or had previously, one or more of the following over a long period of time and to a marked degree: Acute stress disorder, agoraphobia, generalized anxiety disorder, obsessive-compulsive disorder, panic disorder, post-traumatic stress disorder, separation anxiety, social or specific phobia.

(vi) *Childhood disorders.* The child has, or had previously, one or more of the following disorders over a long period of time and to a marked degree: Attention deficit or hyperactivity disorder, conduct disorder or oppositional disorder.

(vii) *Learning disability.* The child has, or had previously, an achievement level on individually administered, standardized tests in reading, mathematics or written expression that is substantially below that expected for age, schooling and level of intelligence.

(viii) *Substance use related disorder.* The child has, or had previously a dependency on alcohol or other drugs (legal or non-legal).

(ix) *Developmental disability.* The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106–402), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial functional limitations in three or more areas of major life activity. Areas of major life activity include: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of ''developmental disability,'' do not indicate the individual conditions that form the basis of this diagnosis separately.

(x) *Other mental/emotional disorder.* The child has, or had previously, one or more of the following conditions over a long period of time and to a marked degree: Mood disorders, personality disorders or psychotic disorders.

(xi) *Other diagnosed condition.* The child has, or had previously, a condition other than those described above that requires special medical care. This includes, but is not limited to, conditions such as chronic illness, a diagnosis as HIV positive or AIDS.

(xii) *Pregnant.* If the title IV–E agency indicated ''female'' in paragraph (b)(2) of this section, provide the appropriate response. If the title IV–E agency indicated ''male'' in paragraph (b)(2) of this section, leave this data element blank.

(8) *School enrollment.* Indicate whether the child is a full-time student at and enrolled in (or in the process of enrolling in) ''elementary,'' ''secondary'' or ''post-secondary education or training'' or ''college,'' as of the earlier of the last day of the report period or the day of exit for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise be enrolled in a school that is currently out of session. An ''elementary or secondary school student'' is defined in section 471(a)(30) of the Act as a child that is: Enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located; instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located; in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in ''post-secondary education or training'' refers to full-time enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in ''college'' refers to a child that is enrolled full-time at a college or university. If child has not reached compulsory school age, indicate ''not school-age.'' If the child has reached compulsory school-age, but is not enrolled or in the process of enrolling in any school setting full-time, indicate ''not enrolled.''

(9) *Educational level.* Indicate the highest educational level from Kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate ''not school-age.'' Indicate ''Kindergarten'' if the child is currently in or about to begin 1st grade. Indicate ''1st grade'' if the child is currently in or about to begin 2nd grade. Indicate ''2nd grade'' if the child is currently in or about to begin 3rd grade. Indicate ''3rd grade'' if the child is currently in or about to begin 4th grade. Indicate ''4th grade'' if the child is currently in or about to begin 5th grade. Indicate ''5th grade'' if the child is currently in or about to begin 6th grade. Indicate ''6th grade'' if the child is currently in or about to begin 7th grade. Indicate ''7th grade'' if the child is currently in or about to begin 8th grade. Indicate ''8th grade'' if the child is currently in or about to begin 9th grade. Indicate ''9th grade'' if the child is currently in or about to begin 10th grade. Indicate ''10th grade'' if the child is currently in or about to begin 11th grade. Indicate ''11th grade'' if the child is currently in or about to begin 12th grade. Indicate ''12th grade'' if the child has graduated from high school. Indicate ''Post-secondary education or training'' if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate ''College'' if the child has completed at least a semester of study at a college or university.

(10) *Educational stability.* Indicate if the child enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement after entry into foster care or a placement change during the report period with ''yes'' or ''no'' as appropriate. If ''yes,'' indicate which of

the applicable reason(s) for the change in enrollment as described in paragraphs (b)(10)(i) through (vii) of this section ''applies'' or ''does not apply;'' if ''no,'' the title IV–E agency must leave those data elements blank.

(i) *Proximity.* The child enrolled in a new school because of the distance to his or her former school.

(ii) *District/zoning rules.* The child enrolled in a new school because county or jurisdictional law or regulations prohibited attendance at former school.

(iii) *Residential facility.* The child enrolled in a new school because he or she formerly attended school on the campus of a residential facility.

(iv) *Services/programs.* The child enrolled in a new school to participate in services or programs (academic, behavioral or supportive services) not offered at former school.

(v) *Child request.* The child enrolled in a new school because he or she requested to leave former school and enroll in new school.

(vi) *Parent/Legal guardian request.* The child enrolled in a new school because his or her parent(s) or legal guardian(s) requested for the child to leave the former school and enroll in a new school.

(vii) *Other.* The child enrolled in a new school for a reason other than those detailed in paragraphs (b)(10)(i) through (vi) of this section.

(11) *Special education.* Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, and/or an Individualized Family Service Program (IFSP) as defined in section 636 of Part C of Title I of IDEA and implementing regulations, as of the end of the report period. Indicate ''IEP,'' if the child has an IEP, ''IFSP,'' if the child has an IFSP or ''not applicable'' if the child does not have an IEP or IFSP.

(12) *IDEA qualifying disability.* If the child has an IEP or IFSP, indicated in paragraph (b)(11) of this section, indicate which of the disability categories listed in the data elements described in paragraphs (b)(12)(i) through (xii) of this section ''applies'' or ''does not apply;'' otherwise the title IV–E agency must leave those data elements blank.

(i) *Developmental delay.* The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or more of the following areas, as defined by the State: Physical development, cognitive development, communication development, social or emotional development or adaptive development.

(ii) *Autism.* The child has a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child's educational performance. The child may also exhibit other characteristics, such as engagement in repetitive activities and stereotyped movements, resistance to environmental change, change in daily routines and unusual responses to sensory experiences.

(iii) *Hearing impairment (including deafness).* The child has an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance.

(iv) *Emotional disturbance.* (A) The child has a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(*1*) An inability to learn that cannot be explained by intellectual, sensory or health factors;

(*2*) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(*3*) Inappropriate types of behavior or feelings under normal circumstances;

(*4*) A general pervasive mood of unhappiness or depression;

(*5*) A tendency to develop physical symptoms or fears associated with personal or school problems.

(*6*) Schizophrenia.

(v) *Intellectual disability.* The child has a significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects the child's educational performance.

(vi) *Orthopedic impairment.* The child has a severe orthopedic impairment that adversely affects a child's educational performance, including impairments caused by a congenital anomaly, impairments caused by disease and impairments from other causes (*e.g.,* cerebral palsy, amputations and fractures or burns that cause contractures).

(vii) *Other health impairment.* The child has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems (*e.g.,* asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, etc.) and adversely affects a child's educational performance.

(viii) *Specific learning disability.* The child has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

(ix) *Speech and language impairment.* The child has a communication disorder, such as stuttering, impaired articulation, language impairment or a voice impairment, which adversely affects a child's educational performance.

(x) *Traumatic brain injury.* The child has an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance.

(xi) *Visual impairments (including blindness).* The child has impairment in vision that, even with correction, adversely affects a child's educational performance.

(xii) *Other.* The child has a condition other than those described above that adversely affects a child's educational performance.

(13) *Prior adoption(s).* Indicate whether the child experienced prior legal adoption(s) before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country. Indicate ''yes'' if the child experienced at least one prior legal adoption, ''no'' if the child has never been legally adopted or ''abandoned'' if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' If the child has experienced a prior legal adoption(s), the title IV–E agency must complete the data elements Prior adoption date, Prior adoption type, and Prior adoption jurisdiction described in paragraphs (b)(13)(i) through (iii) of this section for each prior adoption, as applicable; otherwise the title IV–E agency must leave those data elements blank.

(i) *Prior adoption date(s).* Indicate the month and year that each prior adoption was finalized if the title IV–E agency indicated previously that the child was adopted in the data element Prior

adoption described in paragraph (b)(13) of this section. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV–E agency must provide the date of the adoption (either the original adoption in the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws. If the child was not previously adopted, the title IV–E agency must leave this data element blank.

(ii) *Prior adoption type(s).* Indicate the type of each prior adoption if the title IV–E agency indicated that the child was adopted previously in the data element Prior adoption described in paragraph (b)(13) of this section. Indicate ''foster care adoption within State or Tribal service area'' if the child was in foster care in the reporting State or Tribal service area at the time the prior adoption was legalized. Indicate ''foster care adoption in another State or Tribal service area'' if the child was in foster care in another State or Tribal service area at the time the prior adoption was legalized. Indicate ''intercountry adoption'' if the child had a prior adoption that occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate ''other private or independent adoption'' if the child's prior adoption was neither a foster care adoption nor an intercountry adoption as defined above. If the child was not previously adopted, the title IV–E agency must leave this data element blank.

(iii) *Prior adoption jurisdiction(s).* For each prior adoption noted in paragraph (b)(13)(ii) of this section that occurred outside of the reporting State or Tribal service area, indicate the name of the State, Tribal service area Indian reservation or country, in which the child was previously adopted; otherwise the title IV–E agency must leave this data element blank.

(14) *Prior guardianship(s).* Indicate whether the child experienced a prior legal guardianship(s) before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate ''yes'' if the child has experienced at least one prior legal guardianship, ''no'' if the child has never been in a legal guardianship, or ''abandoned'' if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' If the child has experienced a prior legal guardianship(s), the title IV–E agency must complete the data elements Prior guardianship date, Prior guardianship type and Prior guardianship jurisdiction described in paragraphs (b)(14)(i) through (iii) of this section for each legal guardianship that the child has experienced; otherwise the title IV–E agency must leave those data elements blank.

(i) *Prior guardianship date(s).* Indicate the month and year that each prior guardianship became legalized if the title IV–E agency indicated that the child was placed in a legal guardianship previously as indicated described in paragraph (b)(14) of this section. If the child was not previously in a legal guardianship, the title IV–E agency must leave this data element blank.

(ii) *Prior guardianship type(s).* Indicate the type of each prior guardianship if the title IV–E agency indicated that the child was in a guardianship previously in the data element Prior guardianship described in paragraph (b)(14) of this section. Indicate ''foster care guardianship within State or Tribal service area'' if the child was in foster care in the reporting State or Tribal service area at the time the prior guardianship was legalized. Indicate ''foster care guardianship in another State or Tribal service area'' if the child was in foster care in another State or Tribal service area at the time the prior guardianship was legalized. Indicate ''other private or independent guardianship'' if the child's prior guardianship was not a foster care guardianship as defined above. If the child was not previously in a guardianship, the title IV–E agency must leave this data element blank.

(iii) *Prior guardianship jurisdiction(s).* For each prior guardianship noted in paragraph (b)(14)(ii) of this section that occurred outside of the reporting State or Tribal service area, indicate the name of the State, Tribal service area or Indian reservation in which the child was previously in a guardianship; otherwise the title IV–E agency must leave this data element blank.

(15) *Minor parent.* Indicate the number of children of the child who is the subject of this record. A minor parent has a child(ren) if he or she has given birth herself or fathered any child(ren) who was born. This refers to biological parenthood, regardless of whether or not such children live with their parent(s). A title IV–E agency must report a child older than age 18 in foster care as a ''minor parent'' if he or she has children. If the child who is the subject of this record does not have a child, indicate ''0.'' If the title IV–E agency indicates that the minor parent has at least one child the title IV–E agency must complete the data element ''number of children living with the minor parent(s)'' described in paragraph (e)(14) of this section.

(16) *Child financial and medical assistance.* Indicate whether the child has received financial and medical assistance, other than title IV–E, at any point during the six-month report period. Indicate ''child has received support/assistance'' if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(16)(i) through (vii) of this section ''applies'' or ''does not apply.'' Indicate ''no support/assistance received'' if none of these apply.

(i) *SSI or Social Security benefits.* The child is receiving support from Supplemental Security Income (SSI) or other Social Security benefits under title II or title XVI of the Act.

(ii) *Title XIX Medicaid.* The child is eligible for and may be receiving assistance under the State's title XIX program for medical assistance, including any benefits through title XIX waivers or demonstration programs.

(iii) *Title XXI SCHIP.* The child is eligible for and receiving assistance under a State's Children's Health Insurance Program (SCHIP) under title XXI of the Act, including any benefits under title XXI waivers or demonstration programs.

(iv) *State/Tribal adoption assistance.* The child is receiving an adoption subsidy or other adoption assistance paid for solely by the State or Indian Tribe.

(v) *State/Tribal foster care.* The child is receiving a foster care payment that is solely funded by the State or Indian Tribe.

(vi) *Child Support.* Child support funds are being paid to the title IV–E agency for the benefit of the child by assignment from the receiving parent.

(vii) *Other.* The child is receiving financial support from another source not previously listed above.

(17) *Title IV–E foster care during report period.* Indicate whether a title IV–E foster care maintenance payment was paid on behalf of the child at any point during the report period that is

claimed under title IV–E foster care with a ''yes'' or ''no,'' as appropriate. Indicate ''yes'' if the child has met all eligibility requirements of section 472(a) of the Act and the title IV–E agency has claimed, or intends to claim, Federal reimbursement for foster care maintenance payments made on the child's behalf during the report period.

(18) *Victim of sex trafficking prior to entering foster care.* Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate ''yes'' if the child was a victim or ''no'' if the child had not been a victim.

(i) *Report to Law Enforcement.* If the title IV–E agency indicated ''yes'' in paragraph (b)(18) of this section, indicate whether a report was made to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate ''yes'' if a report was made to law enforcement and indicate ''no'' if no report was made.

(ii) *Date.* If the title IV–E agency indicated ''yes'' in paragraph (b)(18)(i) of this section, indicate the date that the agency made the report to law enforcement.

(19) *Victim of sex trafficking while in foster care.* Indicate ''yes'' if the child was a victim of sex trafficking while in foster care at any time during the current six-month report period. Indicate ''no'' if the child was not a victim while in foster care at any time during the current six-month report period.

(i) *Report to law enforcement.* If the title IV–E agency indicated ''yes'' in this paragraph (b)(19), indicate whether a report was made to law enforcement for entry into the NCIC database. Indicate ''yes'' if a report was made to law enforcement and indicate ''no'' if no report was made.

(ii) *Date.* If the title IV–E agency indicated ''yes'' in paragraph (b)(19)(i) of this section, indicate the date the agency made the report to law enforcement.

(c) *Parent or legal guardian information.* (1)(i) *Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian to the child. To the extent that a child has both a parent and a legal guardian or two different sets of legal parents, the title IV–E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph. If there is only one parent or legal guardian to the child, that person's year of birth must be reported here. If the child was abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(ii) *First parent or legal guardian born in the United States.* Indicate whether the first parent (biological, legal or adoptive) or legal guardian to the child was born in the United States. This must be the same parent or legal guardian whose birth information was reported in paragraph (c)(1)(i) of this section. If the first parent or legal guardian was born in the United States, indicate ''yes.'' If the first parent or legal guardian was born in a country other than the United States, indicate ''no.'' If the child was abandoned indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(2)(i) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian to the child. We are not seeking information on putative parent(s) in this paragraph. If the child was abandoned, indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' Indicate ''not applicable'' if there is not another parent or legal guardian.

(ii) *Second parent or legal guardian born in the United States.* Indicate the country of birth for the second parent (biological, legal or adoptive) or legal guardian to the child. This should be the same parent or legal guardian whose birth information was reported in paragraph (c)(2)(i) of this section. If the second parent or legal guardian was born in the United States, indicate ''yes.'' If the second parent or legal guardian was born in a country other than the United States, indicate ''no.'' If the child was abandoned, indicate ''abandoned.'' Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' Indicate ''not applicable'' if there is not another parent or legal guardian.

(3)(i) *Termination of parental rights petition.* Indicate the month, day and year that each petition to terminate the parental rights of a biological, legal and/or putative parent was filed in court, if applicable. Indicate ''deceased'' if the parent is deceased.

(ii) *Termination of parental rights.* Enter the month, day and year that the court terminated the parental rights of a biological, legal and/or putative parent, for each petition date reported in paragraph (c)(3)(i) of this section, if applicable. If the parent is deceased, enter the date of death.

(4) *Date of judicial finding of abuse or neglect.* Indicate the month, day and year of the first judicial finding that the child has been subject to child abuse or neglect, if applicable. Indicate ''no date'' if there is no such finding by the end of the report period.

(d) *Removal information.* (1) *Date of child's removal.* Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV–E agency.

(i) For a child who is removed and is placed initially in foster care, indicate the date that the title IV–E agency received placement and care responsibility.

(ii) For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV–E agency, indicate the date that the title IV–E agency received placement and care responsibility.

(iii) For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.

(2) *Removal transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.

(3) *Environment at removal.* Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate ''parent household'' if the child was living in a household that included one or both of the child's parents, whether biological, adoptive or legal. Indicate ''relative household'' if the child was living with a relative(s), the relative(s) is not the child's legal guardian and neither of the child's parents were living in the household. Indicate ''legal guardian household'' if the child was living with a legal guardian(s), the guardian(s) is not the child's relative and neither of the child's parents were living in the household. Indicate ''justice facility'' if the child was in a detention center, jail or other similar setting where the child was detained. Indicate ''medical/mental

health facility'' if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate ''other'' if the child was living in another situation not so described, such as living independently.

(4) *Authority for placement and care responsibility.* Indicate the title IV–E agency's authority for placement and care responsibility of the child for each removal reported in paragraph (d)(1) of this section. ''Court ordered'' means that the court has issued an order that is the basis for the title IV–E agency's placement and care responsibility. ''Voluntary placement agreement'' means that an official voluntary placement agreement has been executed between the parent(s), guardian(s) or child age 18 or older and the title IV–E agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in out-of-home care. ''Not yet determined'' means that a voluntary placement agreement has not been signed or a court order has not been issued. When either a voluntary placement agreement is signed or a court order issued, the record must be updated from ''not yet determined'' to the appropriate response option to reflect the title IV–E agency's authority for placement and care responsibility at that time.

(5) *Child and family circumstances at removal.* Indicate all child and family circumstances that were present at the time of the child's removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance listed in the data elements described in paragraphs (d)(1)(i) through (xxvii) ''applies'' or ''does not apply'' for each removal indicated in paragraph (d)(1) of this section.

(i) *Runaway.* The child has left, without authorization, the home or facility where the child was residing.

(ii) *Whereabouts unknown.* The child's whereabouts are unknown and the title IV–E agency does not consider the child to have run away.

(iii) *Physical abuse.* Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

(iv) *Sexual abuse.* Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child's welfare.

(v) *Psychological or emotional abuse.* Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare.

(vi) *Neglect.* Alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child's welfare.

(vii) *Medical neglect.* Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so.

(viii) *Domestic violence.* Alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner or the child and his or her partner if the child is age 18 or older. This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child's welfare.

(ix) *Abandonment.* The child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' This category does not apply when the identity of the parent(s) or legal guardian(s) is known.

(x) *Failure to return.* The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category does not apply when the identity of the parent, legal guardian or caretaker is unknown.

(xi) *Caretaker's alcohol abuse.* A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.

(xii) *Caretaker's drug abuse.* A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.

(xiii) *Child alcohol use.* The child uses alcohol.

(xiv) *Child drug use.* The child uses drugs.

(xv) *Prenatal alcohol exposure.* The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome.

(xvi) *Prenatal drug exposure.* The child has been identified as prenatally exposed to drugs.

(xvii) *Diagnosed condition.* The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition.

(xviii) *Inadequate access to mental health services.* The child or child's family has inadequate resources to access the necessary mental health services outside of the child's out-of-home care placement.

(xix) *Inadequate access to medical services.* The child or child's family has inadequate resources to access the necessary medical services outside of the child's out-of-home care placement.

(xx) *Child behavior problem.* The child's behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

(xxi) *Death of caretaker.* Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.

(xxii) *Incarceration of caretaker.* The child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.

(xxiii) *Caretaker's significant impairment—physical/emotional.* A physical or emotional illness or disabling condition of the child's parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.

(xxiv) *Caretaker's significant impairment—cognitive.* The child's parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.

(xxv) *Inadequate housing.* The child's or his or her family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside. This circumstance also includes homelessness.

(xxvi) *Voluntary relinquishment for adoption.* The child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV–E agency, in writing, for the purpose of having the child adopted.

(xxvii) *Child requested placement.* The child, age 18 or older, has requested placement into foster care.

(e) *Living arrangement and provider information.* (1) *Date of living*

arrangement. Indicate the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. Indicate the date that the child was considered by the title IV–E agency as having run away or when his or her whereabouts became unknown. In the case of a child who is already in a living arrangement and remains there when the title IV–E agency receives placement and care responsibility, indicate the date of the VPA or court order providing the title IV–E agency with placement and care responsibility for the child, rather than the date that the child was originally placed in the living arrangement.

(2) *Foster family home.* Indicate whether each of the child's living arrangements is a foster family home, with a ''yes'' or ''no'' as appropriate. If the child has run away or the child's whereabouts are unknown, indicate ''no.'' If the title IV–E agency indicates that the child is living in a foster family home, by indicating ''yes,'' the title IV–E agency must complete the data element Foster family home type in paragraph (e)(3) of this section. If the title IV–E agency indicates ''no,'' the title IV–E agency must complete the data element Other living arrangement type in paragraph (e)(4) of this section.

(3) *Foster family home type.* If the title IV–E agency indicated that the child is living in a foster family home in the data element described in paragraph (e)(2), indicate whether each foster family home type listed in the data elements in paragraphs (e)(3)(i) through (e)(3)(vi) of this section applies or does not apply; otherwise the title IV–E agency must leave this data element blank.

(i) *Licensed home.* The child's living arrangement is licensed or approved by the State or Tribal licensing/approval authority.

(ii) *Therapeutic foster family home.* The home provides specialized care and services.

(iii) *Shelter care foster family home.* The home is so designated by the State or Tribal licensing/approval authority, and is designed to provide short-term or transitional care.

Relative foster family home. The foster parent(s) is related to the child by biological, legal or marital connection and the relative foster parent(s) lives in the home as his or her primary residence.

(v) *Pre-adoptive home.* The home is one in which the family and the title IV–E agency have agreed on a plan to adopt the child.

(vi) *Kin foster family home.* The home is one in which there is a kin relationship as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s).

(4) *Other living arrangement type.* If the title IV–E agency indicated that the child's living arrangement is other than a foster family home in the data element Foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise the title IV–E agency must leave this data element blank. Indicate ''group home-family operated'' if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate ''group home-staff operated'' if the child is in a group home that provides 24-hour care for children where the care-giving is provided by shift or rotating staff. Indicate ''group home-shelter care'' if the child is in a group home that provides 24-hour care which is short-term or transitional in nature, and is designated by the State or Tribal licensing/approval authority to provide shelter care. Indicate ''residential treatment center'' if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions. Indicate ''child care institution'' if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State or Tribal authority responsible for licensing or approving child care institutions. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate ''child care institution-shelter care'' if the child is in a child care institution as defined above and the institution is designated to provide shelter care by the State or Tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate ''supervised independent living'' if the child is living independently in a supervised setting. Indicate ''juvenile justice facility'' if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate ''medical or rehabilitative facility'' if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate ''psychiatric hospital'' if the child is in a facility that provides emotional or psychological health care and is licensed or accredited as a hospital. Indicate ''runaway'' if the child has left, without authorization, the home or facility where the child was placed. Indicate ''whereabouts unknown'' if the child is not in the physical custody of the title IV–E agency or person or institution with whom the child has been placed, the child's whereabouts are unknown and the title IV–E agency does not consider the child to have run away. Indicate ''placed at home'' if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV–E agency to return the child home permanently.

(5) *Private agency living arrangement.* Indicate the type of contractual relationship with a private agency for each of the child's living arrangements reported in paragraph (e)(1) of this section. Indicate ''private agency involvement'' if the child is placed in a living arrangement that is either licensed, managed or run by a private agency that is under contract with the title IV–E agency. Indicate ''no private agency involvement'' if the child's living arrangement is not licensed, managed or run by a private agency.

(6) *Location of living arrangement.* Indicate whether each of the child's living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting State or Tribal service area or is outside of the country. Indicate ''out-of-State or out-of-Tribal service area'' if the child's living arrangement is located outside of the reporting State or Tribal service area. Indicate ''in-State or in-Tribal service area'' if the child's living arrangement is located within the reporting State or Tribal service area. Indicate ''out-of-country'' if the child's living arrangement is outside of the United States. Indicate ''runaway or whereabouts unknown'' if the child has run away from his or her living arrangement or the child's whereabouts are unknown. If the title IV–E agency indicates either ''out-of-State or out-of-Tribal service area'' or ''out-of-country'' for the child's living arrangement, the title IV–E agency must complete the data element in paragraph (e)(7) of this section; otherwise the title IV–E agency must leave it blank.

(7) *Jurisdiction or country where child is living.* Indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for each living arrangement, if the title IV–E agency indicated either ''out-of-State or out-of-Tribal service area'' or ''out-of-country'' in paragraph (e)(6) of this section; otherwise the title IV–E agency must leave it blank.

(8) *Number of siblings in out-of-home care.* Indicate the current total number of siblings, if applicable, that the child has who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not include the child who is the subject of this record in the total number. If the child does not have siblings who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency during the report period, the title IV–E agency must indicate ''0'' as the number for this data element. If the child does not have any siblings, the title IV–E agency must indicate ''not applicable'' for this data element. If the title IV–E agency indicates either ''0'' or ''not applicable,'' the title IV–E agency must leave the data elements in paragraphs (e)(9) and (e)(10) of this section blank.

(9) *Siblings placed together in out-of-home care.* Indicate the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child's living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(10) *Siblings in out-of-home care not living with child.* Indicate the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency, and who is not placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child's living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(11) *Number of siblings in an adoption or legal guardianship.* Indicate the total number of siblings, if applicable, that a child has who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or legal guardianship. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not include the child who is the subject of this record in the total number. If the child does not have siblings who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or legal guardianship, the title IV–E agency must indicate ''0'' as the number for this data element. If the child does not have any siblings, the title IV–E agency must indicate ''not applicable'' for this data element. If the title IV–E agency indicates either ''0'' or ''not applicable,'' the title IV–E agency must leave the data elements in paragraphs (e)(12) and (e)(13) of this section blank.

(12) *Siblings in adoptive/guardianship placements living with child.* Indicate the child record number(s) of each sibling(s) who exited the placement and care responsibility of the title IV–E agency to a finalized adoption or a legal guardianship and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child's living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(13) *Siblings in adoptive/guardianship placements not living with child.* Indicate the child record number(s) of each sibling(s) who exited the placement and care responsibility of the title IV–E agency to a finalized adoption or a legal guardianship and who is not living with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child's living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(14) *Number of children living with the minor parent.* Indicate the number of the minor parent's children living with him or her in the same living arrangement if the title IV–E agency indicated that the minor parent has children in paragraph (b)(15) of this section. Report this information for each living arrangement. Do not include any child(ren) of the minor parent who is in out-of-home care and placed separately from his or her parent. If the minor parent does not have any children, the title IV–E agency must leave this data element blank.

(15) *Marital status of the foster parent(s).* Indicate the marital status of the child's foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate ''married couple'' if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate ''unmarried couple'' if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate ''separated'' if the foster parent is legally separated or is living apart from his or her spouse. Indicate ''single female'' if the foster parent is a female who is not married and is not living with another individual as part of a couple. Indicate ''single male'' if the foster parent is a male who is not married and is not living with another individual as part of a couple. If the response is either ''married couple'' or ''unmarried couple,'' the title IV–E agency must complete the data elements for the second foster parent in paragraphs (e)(20) through (e)(22) of this section; otherwise the title IV–E agency must leave those data elements blank.

(16) *Child's relationships to the foster parent(s).* Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate ''paternal grandparent(s)'' if the foster parent(s) is the child's paternal grandparent (by biological, legal or marital connection). Indicate ''maternal grandparent(s)'' if the foster parent(s) is the child's maternal grandparent (by biological, legal or marital connection). Indicate ''other paternal relative(s)'' if the foster parent(s) is the child's paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate ''other maternal relative(s)'' if the foster parent(s) is the child's maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate ''sibling(s)'' if the foster parent(s) is a brother or sister of the child, either biologically, legally or by marriage. Indicate ''non-relative(s)'' if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate ''kin'' if the foster parent(s) has kin relationship to the child as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s).

(17) *Year of birth for first foster parent.* Indicate the year of birth for the

first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.

(18) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(18)(i) through (vii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(19) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the first foster parent does not know his or her ethnicity indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.''

(20) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(21) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(21)(i) through (vii) of this section applies with a ''yes'' or ''no.'' The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The second foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(22) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the second foster parent does not know his or her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.'' The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(23) *Sources of Federal assistance in living arrangement.* Indicate in the data elements described in paragraphs (e)(23)(i) through (e)(23)(viii) of this section if the identified source of Federal assistance ''applies'' or ''does not apply'' on the last day of the child's placement in each living arrangement or on the last day of the report period if the child's living arrangement is ongoing, for each living arrangement as indicated in paragraph (e)(1) of this section. If the title IV–E agency indicated ''applies'' in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii), the title IV–E agency must complete the data element in paragraph (e)(24) of this section; otherwise the title IV–E agency must leave it blank.

(i) *Title IV–E foster care.* The child is determined eligible for title IV–E foster care maintenance payments.

(ii) *Title IV–E adoption subsidy.* The child is determined eligible for a title IV–E adoption assistance subsidy.

(iii) *Title IV–E guardianship assistance.* The child is determined eligible for a title IV–E guardianship assistance subsidy.

(iv) *Title IV–A TANF.* The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.

(v) *Title IV–B.* The child's living arrangement is supported by funds under title IV–B of the Act.

(vi) *SSBG.* The child's living arrangement is supported by funds under title XX of the Act.

(vii) *Chafee Foster Care Independence Program.* The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.

(viii) *Other federal source.* The child's living arrangement is supported through other Federal funds not indicated above.

(24) *Amount of payment.* Indicate the total (title IV–E agency and Federal share) per diem amount of the foster care maintenance payment, adoption

assistance subsidy, or guardianship assistance subsidy that the child is eligible for or paid to the foster parent(s) on behalf of the title IV–E eligible child on the last day of each living arrangement or the last day of the report period, if the child's living arrangement is ongoing. The title IV–E agency must complete this data element for each living arrangement as indicated in paragraph (e)(1) of this section if the title IV–E agency indicated ''applies'' in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) for that living arrangement. If the title IV–E agency indicated ''applies'' in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) of this section and no payment was made, the title IV–E agency must indicate ''0'' for this data element.

(25) *Services provided in other living arrangements.* If the title IV–E agency indicated that the child's living arrangement is other living arrangement type as indicated in paragraph (e)(4) of this section, indicate the type of services, if any, that is provided by this setting. If there are no services provided by the agency setting, the title IV–E agency must indicate ''no.'' If the title IV–E agency indicated in paragraph (e)(2) of this section that the child is living in a foster family home, leave this data element blank. If there are services provided, the title IV–E agency must indicate ''yes'' in paragraph (e)(25) and then indicate whether each paragraphs (e)(25)(i) through (e)(25)(iv) of this section ''applies'' or does not apply.''

(i) Specialized education.

(ii) Treatment.

(iii) Counseling.

(iv) Other services.

(f) *Permanency planning.* (1) *Permanency plan.* Indicate each permanency plan established for the child. Indicate ''reunify with parent(s) or legal guardian(s)'' if the plan is to keep the child in out-of-home care for a limited time and the title IV–E agency is to work with the child's parent(s) or legal guardian(s) to establish a stable family environment. Indicate ''live with other relatives'' if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child's parent(s) or legal guardian(s). Indicate ''adoption'' if the plan is to facilitate the child's adoption by relatives, foster parents, kin or other unrelated individuals. Indicate ''guardianship'' if the plan is to establish a new legal guardianship. Indicate ''planned permanent living arrangement'' if the plan is for the child to remain in foster care until the title IV–E agency's placement and care responsibility ends. The title IV–E agency must only select ''planned permanent living arrangement'' consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate ''permanency plan not established'' if a permanency plan has not yet been established.

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan(s) was established during each out-of-home care episode.

(3) *Concurrent permanency planning.* Indicate whether the title IV–E agency has identified a concurrent permanency plan for the child. Indicate ''concurrent permanency plan,'' if there is a concurrent permanency plan for the child, ''no concurrent permanency plan'' if the title IV–E agency uses concurrent permanency planning but does not have a concurrent permanency plan for the child or ''not applicable'' if the title IV–E agency does not engage in concurrent permanency planning. If the title IV–E agency indicates that the child has a concurrent permanency plan, the title IV–E agency must complete the data elements in paragraphs (f)(3)(i) and (ii) of this section; otherwise the title IV–E agency must leave these data elements blank.

(i) *Concurrent permanency plan.* The title IV–E agency must indicate the type of plan if the child has a concurrent permanency plan as indicated in paragraph (f)(3) of this section. Indicate ''live with other relatives'' if the plan is for the child to live permanently with a relative or relatives (by biological, legal or marital connection) who is not the child's parent(s) or legal guardian(s). Indicate ''adoption'' if the plan is to facilitate the child's adoption by a relative(s), foster parents, kin or other unrelated individuals. Indicate ''guardianship'' if the plan is to establish a new legal guardianship. Indicate ''planned permanent living arrangement'' if the plan is for the child to remain in foster care until the title IV–E agency's placement and care responsibility ends. The title IV–E agency must only select ''planned permanent living arrangement'' consistent with the requirements in section 475(5)(C)(i) of the Act.

(ii) *Date of concurrent permanency plan.* Indicate the month, day and year that each concurrent plan was established if the title IV–E agency indicated that the child has a concurrent permanency plan in paragraph (f)(3) of this section.

(4) *Reason for permanency plan change.* Indicate whether the child's permanency plan changed during the report period and the reason(s) for the change in the child's permanency plan. Indicate ''yes'' if the child's permanency plan changed during the report period. Indicate ''no'' if the child's permanency plan did not change during the report period. If the title IV–E agency indicates ''yes,'' the title IV–E agency must indicate whether each reason described in paragraphs (f)(4)(i) through (viii) of this section ''applies'' or ''does not apply.'' If there is no change in the child's permanency plan, leave paragraphs (f)(4)(i) through (viii) of this section blank.

(i) *Not engaged in services.* The child's parent(s) or legal guardian(s) has not engaged in services or otherwise taken the steps necessary to reunify with the child.

(ii) *Lack of progress in reunification plan.* The child's parent(s) or legal guardian(s) is not meeting the requirements of the case plan for reunification consistently by demonstrating needed changes in behavior to provide a safe family home for the child or otherwise taking the steps necessary to reunify with the child.

(iii) *Unable/incapable of caring for child permanently.* The child's parent(s) or legal guardian(s) is unable or incapable of permanently caring for the child, due to permanent, long-term or other extenuating circumstances, such as abandonment of the child by the child's parent(s) or legal guardian(s), death of the child's parent(s) or legal guardian(s), long-term incarceration of the child's parent(s) or legal guardian(s) or if the rights of the child's parent(s) have been terminated or the legal guardianship was dissolved.

(iv) *Reunification appropriate.* The child's parent(s) or legal guardian(s) is able to permanently and safely care for the child.

(v) *Child preference.* An older child stated his or her preference for the change in the permanency plan.

(vi) *Adoption/guardianship appropriate.* Permanency for the child through adoption or legal guardianship is a more appropriate permanency plan.

(vii) *Current foster care provider committed to permanency.* The child's current foster care provider, whether a relative, foster parent, kin or other individual, expressed a commitment to care permanently for the child and the permanency plan of adoption, reunification or legal guardianship has been ruled out by the title IV–E agency.

(viii) *Emancipation likely.* Permanency for the child through reunification, adoption or legal guardianship is not an appropriate permanency plan.

(5) *Date of periodic review.* Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in

section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.

(6) *Date of permanency hearing.* Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.

(7) *Juvenile justice.* Indicate whether the child was found to be a status offender or adjudicated delinquent by a juvenile judge or court at any time during the report period. If the child was not found to be a status offender or adjudicated delinquent during the report period indicate ''not applicable.'' If the child was involved with the juvenile justice system, indicate the type of involvement. Indicate ''status offender'' if the child has been found to be a status offender. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate ''adjudicated delinquent'' if the child has been adjudicated delinquent. Indicate ''both status offender and delinquent'' if the child has been found to be a status offender and adjudicated delinquent during the report period.

(8) *Caseworker visit dates.* Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.

(9) *Caseworker visit location.* Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate ''child's residence'' if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. Indicate ''other location'' if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community.

(10) *Caseworker visit purpose.* Indicate the primary purpose of each in-person, face-to-face visit between the caseworker and the child. Indicate ''assessment or case planning'' if the purpose of the visit was to assess the child's situation, whether through a formal assessment or continuous assessment or if the purpose was to conduct other case planning activities for the child's safety, permanency or well-being. Indicate ''placement of the child'' if the purpose of the visit was to place the child in foster care or another setting. Indicate ''transportation'' if the purpose of the visit was to transport the child to a visit or appointment. Indicate ''court hearing'' if the purpose of the visit was to attend a court hearing related to the child's case.

(11) *Caseworker visit alone with child.* Indicate if the caseworker visited the child alone at any time during the visit for each in-person, face-to-face visit between the caseworker and the child. Indicate ''yes'' or ''no,'' as appropriate.

(12) *Transition plan.* Indicate whether a child has a transition plan that meets the requirements of section 475(5)(H) of the Act. Indicate ''yes'' or ''no'' or ''not applicable.'' If the title IV–E agency indicates ''yes,'' the title IV–E agency must indicate the provisions that are included in the child's transition plan as described in paragraphs (f)(12)(i) through (vi) of this section by indicating if a provision ''applies'' or ''does not apply.'' If the title IV–E agency indicates ''no'' or ''not applicable,'' leave paragraphs (f)(12)(i) through (vi) of this section blank.

(i) *Housing.* Specific options on housing are included in the child's transition plan.

(ii) *Health insurance.* Specific options on health insurance are included in the child's transition plan.

(iii) *Health care treatment decisions.* Information is included in the child's transition plan on the importance of designating another individual to make health care treatment decisions on behalf of the child, if child is unable to make such decisions, and the child's transition plan provides the child with the option to execute a health care power of attorney, health care proxy or other similar document.

(iv) *Education.* Specific options on education are included in the child's transition plan.

(v) *Mentoring and continuing support.* Specific options on mentoring and continuing support services are included in the child's transition plan.

(vi) *Workforce support and employment services.* Specific options on work force supports and employment services are included in the child's transition plan.

(13) *Date of transition plan.* Indicate the month, day and year of the child's transition plan, if the title IV–E agency indicated in paragraph (f)(12) of this section that the child has a transition plan that meets the requirements of section 475(5)(H) of the Act; otherwise leave this paragraph blank.

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the title IV–E agency's placement and care responsibility of the child ends.

(1) *Date of exit.* Indicate the month, day and year for each of the child's exits from out-of-home care. An exit occurs when the title IV–E agency's placement and care responsibility of the child ends. If the child has not exited out-of-home care the title IV–E agency must leave this data element blank. If this data element is applicable, the data elements in paragraphs (g)(2) and (g)(3) of this section must have a response.

(2) *Exit transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) of this section was entered into the information system.

(3) *Exit reason.* Indicate the reason for each of the child's exits from out-of-home care. Indicate ''not applicable'' if the child has not exited out-of-home care. Indicate ''reunify with parent(s)/legal guardian(s)'' if the child was returned to his or her parent(s) or legal guardian(s) and the title IV–E agency no longer has placement and care responsibility. Indicate ''live with other relatives'' if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate ''adoption'' if the child was legally adopted. Indicate ''emancipation'' if the child exited care due to age. Indicate ''guardianship'' if the child exited due to a legal guardianship of the child. Indicate ''runaway or whereabouts unknown'' if the child ran away or the child's whereabouts were unknown at the time that the title IV–E agency's placement and care responsibility ends. Indicate ''death of child'' if the child died while in out-of-home care. Indicate ''transfer to another agency'' if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting State or Tribal service area, but not if the transfer is to a public agency, Indian Tribe, Tribal organization or consortium that has an agreement with a title IV–E agency under section 472(a)(2)(B) of the Act. Indicate ''other'' if the child exited due to marriage, confinement to jail or prison or for a reason not described.

(4) *Transfer to another agency.* If the title IV–E agency indicated the child was transferred to another agency in the data element Exit reason described in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: ''State title IV–E agency,'' ''Tribal title IV–E agency,'' ''Indian Tribe or Tribal agency (non-IV–E),'' ''juvenile justice agency,'' ''mental health agency,'' ''other public agency'' or ''private agency.''

(h) *Exit to adoption and guardianship information.* Report information in paragraphs (h)(1) through (11) only if the title IV–E agency indicated the child

exited to adoption or legal guardianship in the data element Exit reason described in paragraph (g)(3) of this section. Otherwise the title IV–E agency must leave these data elements blank.

(1) *Marital status of the adoptive parent(s) or guardian(s).* Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate ''married couple'' if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Complete this data element even if only one person of the married or common law married couple is the adoptive parent or legal guardian of the child. Indicate ''unmarried couple'' if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Complete this data element even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate ''single female'' if the adoptive parent or legal guardian is a female who is not married and is not living with another individual as part of a couple. Indicate ''single male'' if the adoptive parent or legal guardian is a male who is not married and is not living with another individual as part of a couple. If the response is ''married couple'' or ''unmarried couple,'' the title IV–E agency also must complete the data elements for the second adoptive parent or second legal guardian in paragraphs (h)(6) through (8) of this section; otherwise the title IV–E agency must leave these data elements blank.

(2) *Child's relationship to the adoptive parent(s) or guardian(s).* Indicate the type of relationship, kinship or otherwise, between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in the data elements described in paragraphs (h)(2)(i) through (viii) of this section ''applies'' or ''does not apply.''

(i) *Paternal grandparent(s).* The adoptive parent(s) or legal guardian(s) is the child's paternal grandparent(s), by biological, legal or marital connection.

(ii) *Maternal grandparent(s).* The adoptive parent(s) or legal guardian(s) is the child's maternal grandparent(s), by biological, legal or marital connection.

(iii) *Other paternal relative(s).* The adoptive parent(s) or legal guardian(s) is the child's paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.

(iv) *Other maternal relative(s).* The adoptive parent(s) or legal guardian(s) is the child's maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.

(v) *Sibling(s).* The adoptive parent or legal guardian is a brother or sister of the child, either biologically, legally or by marriage.

(vi) *Kin.* The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the adoptive parent(s) or legal guardian(s).

(vii) *Non-relative(s).* The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(viii) *Foster parent(s).* The adoptive parent(s) or legal guardian(s) was the child's foster parent(s).

(3) *Date of birth of first adoptive parent or guardian.* Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.

(4) *Race of first adoptive parent or guardian.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(4)(i) through (vii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The first adoptive parent or legal guardian does not know his or her race, or at least one race.

(vii) *Race—Declined.* The first adoptive parent, or legal guardian has declined to identify a race.

(5) *Hispanic or Latino ethnicity of first adoptive parent or guardian.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.''

(6) *Date of birth of second adoptive parent, guardian, or other member of the couple.* Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV–E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(7) *Race of second adoptive parent, guardian, or other member of the couple.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(7)(i) through (vii) of this section applies with a ''yes'' or ''no.'' The title IV–E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The second adoptive parent, legal guardian, or other member of the couple does not know his or her race, or at least one race.

(vii) *Race—Declined.* The second adoptive parent, legal guardian, or other member of the couple has declined to identify a race.

(8) *Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the second adoptive parent, legal guardian, or other member of the couple does not know his or her ethnicity, indicate ''unknown.'' If the individual refuses to identify his or her ethnicity, indicate ''declined.'' The title IV–E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the State or Tribal service area, outside of the State or Tribal service area or into another country for adoption or legal guardianship. Indicate ''interjurisdictional adoption or guardianship'' if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the State or Tribal service area but within the United States of America. Indicate ''intercountry adoption or guardianship'' if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the United States of America. Indicate ''intrajurisdictional adoption or guardianship'' if the reporting title IV–E agency placed the child within the same State or Tribal service area as the one with placing responsibility. If the title IV–E agency indicates either ''interjurisdictional adoption or guardianship'' or ''intercountry adoption or guardianship'' for the child's adoption or legal guardianship, the title IV–E agency must complete the data element in paragraph (h)(10) of this section; otherwise the title IV–E agency must leave it blank.

(10) *Interjurisdictional adoption or guardianship jurisdiction.* Indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for adoption or legal guardianship. The title IV–E agency must complete this data element only if the title IV–E agency indicated either ''interjurisdictional adoption or guardianship'' or ''intercountry adoption or guardianship'' in paragraph (h)(9) of this section; otherwise the title IV–E agency must leave it blank.

(11) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate ''title IV–E agency'' if the reporting title IV–E agency placed the child for adoption or legal guardianship. Indicate ''private agency under agreement'' if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV–E agency. Indicate ''Indian Tribe under contract/agreement'' if an Indian Tribe, Tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV–E agency.

§ 1355.44 Adoption and Guardianship Assistance Data File Elements.

A title IV–E agency must collect and report the following information for each child in the adoption and guardianship assistance reporting population, if applicable based on § 1355.42(c).

(a) *General information.* (1) *Title IV–E agency.* Indicate the name of the title IV–E agency responsible for submitting the AFCARS data to ACF.

(2) *Report date.* The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.

(3) *Child record number.* The child record number is the encrypted, unique person identification number. If a child was previously in out-of-home care, this number must be the same as the child record number provided in § 1355.43(a)(4) of the out-of-home care data file. The child record number must remain the same for the child, no matter where the child lives and across all report periods. The title IV–E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child demographics.* (1)(i) *Child's date of birth.* Indicate the month, day and year of the child's birth.

(ii) *Child born in the United States.* Indicate whether the child was born in the United States. If the child was born in the United States, indicate ''yes.'' If the child was born in a country other than the United States, indicate ''no.''

(2) *Child's sex.* Indicate whether the child is ''male'' or ''female,'' as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child or the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(2)(i) through (b)(2)(viii) of this section applies with a ''yes'' or ''no.''

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The child or parent or legal guardian does not know the race, or at least one race of the child.

(vii) *Race—Abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.''

(viii) *Race—Declined.* The child or parent or legal guardian has declined to identify a race.

(4) *Hispanic or Latino Ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a ''yes'' or ''no.'' If the child or the child's parent or legal guardian does not know or cannot communicate whether the child is of Hispanic or Latino ethnicity, indicate ''unknown.'' If the child was abandoned indicate ''abandoned.'' Abandoned means that the child was

left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a ''safe haven.'' If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate ''declined.''

(c) *Adoption and guardianship assistance arrangement and agreement information.* (1) *Assistance agreement type.* Indicate whether the child is or was in a finalized adoption with a title IV–E adoption assistance agreement or in a legal guardianship with a title IV–E guardianship assistance agreement, pursuant to sections 473(a) and 473(d) of the Act, in effect during the report period. Indicate ''title IV–E adoption assistance agreement'' or ''title IV–E guardianship assistance agreement,'' as appropriate.

(2) *Adoption or guardianship subsidy amount.* Indicate the per diem dollar amount of the financial subsidy paid to the adoptive parent(s) or legal guardian(s) on behalf of the child during the last month of the current report period, if any. The title IV–E agency must indicate ''0'' if a financial subsidy was not paid during the last month of the report period.

(3) *Nonrecurring adoption or guardianship costs.* Indicate whether the IV–E agency made payments on behalf of the adoptive parent(s) or legal guardian(s) for nonrecurring costs, per sections 473(a)(6) and 473(d) of the Act, during the current report period. Indicate ''costs paid'' or ''no costs paid,'' as appropriate.

(4) *Nonrecurring adoption or guardianship cost amount.* Indicate the total dollar amount of the payment the title IV–E agency made on behalf of the adoptive parent(s) or guardian(s) for the nonrecurring costs during the report period if the title IV–E agency reported that these costs were paid in the data element Nonrecurring adoption or guardianship costs described in paragraph (3); otherwise the title IV–E agency must leave this data element blank.

(5) *Adoption or guardianship finalization date.* Indicate the month, day and year that the child's adoption was finalized or the guardianship became legalized.

(6) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate ''title IV–E agency'' if the reporting title IV–E agency placed the child for adoption or legal guardianship. Indicate ''private agency under a contract/agreement'' if a private agency placed the child for adoption or legal guardianship through a contract or agreement with the reporting title IV–E agency. Indicate ''Indian Tribe'' if an Indian Tribe, Tribal organization or consortium placed the child for adoption or legal guardianship. Indicate ''private agency'' if a private agency had legal custody of the child or on behalf of a parent placed the child for adoption or legal guardianship. If the title IV–E agency indicates either ''Indian Tribe'' or ''private agency,'' the title IV–E agency must complete paragraphs (c)(7) and (8) of this section; otherwise the title IV–E agency must leave blank.

(7) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the State or Tribal service area or in another State or Tribal service area for adoption or legal guardianship. Indicate ''interjurisdictional adoption or guardianship'' if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or a guardian(s) who lives outside of the reporting State or Tribal service area. Indicate ''intrajurisdictional adoption or guardianship'' if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or a guardian(s) who lives in the reporting State or Tribal service area.

(8) *Interjurisdictional adoption or guardianship jurisdiction.* Indicate the name of the State, Tribal service area or Indian reservation in which the child was placed for adoption or legal guardianship, if the title IV–E agency indicated ''interjurisdictional adoption or guardianship'' in paragraph (c)(7) of this section; otherwise the title IV–E agency must leave this paragraph blank.

(9) *Number of siblings.* Indicate the number of siblings that a child has that, at any point during the report period, are either: in out-of-home care or have a finalized adoption or legal guardianship and are under a title IV–E adoption or guardianship assistance agreement. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not include the child who is the subject of this record in the number. If the child does not have siblings that are in out-of-home care or under a title IV–E adoption or guardianship assistance agreement, the title IV–E agency must indicate ''0'' as the number for this data element. If a child does not have any siblings, the title IV–E agency must indicate ''not applicable'' for this data element.

(10) *Siblings in out-of-home care.* Indicate the child record number(s) of siblings who are in out-of-home care and are placed in the child's adoptive or guardianship home at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child is living in or out-of-State or Tribal service area. Do not include the record number for the child who is the subject of this record. If the child is not residing with any siblings who are in out-of-home care, the title IV–E agency must leave this data element blank.

(11) *Siblings in adoption/guardianship.* Indicate the child record number(s) of siblings who also have a finalized adoption or legal guardianship, are under a title IV–E adoption or guardianship assistance agreement and are living with the child at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child is living in or out-of-State or Tribal service area. Do not include the record number for the child who is the subject of this record. If the child does not have any siblings in the adoptive or guardianship home who also have a finalized adoption or legal guardianship and are under a title IV–E adoption or guardianship assistance agreement, the title IV–E agency must leave this data element blank.

(12) *Agreement termination date.* If the title IV–E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement terminated or expired; otherwise leave this data element blank.

§ 1355.45 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care and adoption and guardianship assistance data files that a title IV–E agency submits to determine whether the data complies with the requirements of § 1355.42 and the data file submission and data quality standards described in paragraphs (c) and (d) of this section. ACF will exempt records related to a child in either data file whose 18th birthday occurred in a prior report period and will exempt records relating to a child in the adoption and guardianship assistance data file who is in a title IV–E guardianship from a compliance determination as described in paragraph (e) of this section.

(b) *Errors.* ACF will utilize the error definitions in paragraphs (b)(1) through (b)(5) of this section to assess a title IV–E agency's out-of-home care and adoption and guardianship assistance

data files. This assessment of errors will help ACF to determine if the title IV–E agency's submitted data files meet the data file submission and data quality standards outlined in paragraphs (c) and (d) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which a data element has a blank or otherwise missing response, when such a response is not a valid option as described in §§ 1355.43 or 1355.44.

(2) *Invalid data.* Invalid data refers to instances in which a data element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in §§ 1355.43 or 1355.44.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which a data element fails an internal consistency check designed to validate the logical relationship between data elements within each record. This assessment will identify all data elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for a data element recurs across the records in either the out-of-home care data file or adoption and guardianship assistance data file beyond a specified acceptable threshold.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in § 1355.43(d)(2) and (g)(2) respectively, are entered into the title IV–E agency's information system more than 30 days after the event.

(c) *Data file standards.* To be in compliance with the AFCARS requirements the title IV–E agency must submit a data file in accordance with the data file standards described in paragraphs (c)(1) through (3) of this section.

(1) *Timely submission.* ACF must receive the data files on or before the reporting deadline described in § 1355.42(a).

(2) *Proper format.* The data files must meet the technical standards issued by ACF for data file construction and transmission. In addition, each record subject to compliance standards within the data file must have the data elements described in §§ 1355.43(a)(1) through (a)(4), 1355.43(b)(1)(i) and (b)(2), 1355.44(a)(1) through (a)(3) and 1355.44(b)(1)(i) and (b)(2) be 100 percent free of missing data, invalid data and internally inconsistent data. ACF will not process a title IV–E agency's data file that does not meet the proper format standard.

(3) *Acceptable cross-file.* The data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF.

(d) *Data quality standards.* To be in compliance with the AFCARS requirements, the title IV–E agency must submit a data file that has no more than 10 percent total of missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the title IV–E agency's out-of-home care data file and adoption and guardianship assistance data file meets the data file standards in paragraph (c) of this section. Compliance is determined separately for each data file.

(2) If each data file meets the data file standards, ACF will then determine whether each data file meets the data quality standards in paragraph (d) of this section. For every data element, we will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator), to determine whether the title IV–E agency has met the applicable data quality standards.

(3) In general, a title IV–E agency that has not met either the data file standards or data quality standards must submit a corrected data file(s) no later than when data is due for the subsequent six month report period (*i.e.,* by April 30 and October 30), as applicable. ACF will determine that the corrected data file(s) is in compliance if it meets the data file and data standards in paragraphs (c) and (d) of this section. *Exception:* If ACF determines initially that the title IV–E agency's data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transaction dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the title IV–E agency does not submit a corrected data file, or submits a corrected data file that fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the title IV–E agency of such and apply penalties as provided in § 1355.46.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the title IV–E agency is meeting all of the requirements of §§ 1355.41 through 1355.44.

§ 1355.46 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the title IV–E agency's claims for title IV–E foster care administration and training for the quarter in which the title IV–E agency is required to submit the data files. For data files due on April 30, ACF will assess the penalty based on the title IV–E agency's claims for the third quarter of the Federal fiscal year. For data files due on October 30, ACF will assess the penalty based on the title IV–E agency's claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent (⅙ of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the title IV–E agency's submitted corrected data file does not comply with § 1355.45.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of one fourth of one percent (¼ of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the title IV–E agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the title IV–E agency's title IV–E foster care grant award in the amount of the penalty from the title IV–E agency's claims following the title IV–E agency notification of ACF's final determination of noncompliance.

(d) *Appeals.* The title IV–E agency may appeal ACF's final determination of noncompliance to the HHS Departmental Appeals Board pursuant to 45 CFR part 16.

Appendices A through E to Part 1355 [Removed]

■ 4. Remove Appendices A through E to Part 1355.

[FR Doc. 2015–02354 Filed 2–6–15; 8:45 am]

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Part IV

Department of Education

34 CFR Ch. II
Final Requirements—School Improvement Grants—Title I of the Elementary and Secondary Education Act of 1965; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2014–OESE–0079; CFDA Number: 84.377A]

RIN 1810–AB22

Final Requirements—School Improvement Grants—Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Office of Elementary and Secondary Education, Department of Education (Department).

ACTION: Final requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education adopts final requirements for the School Improvement Grants (SIG) program, authorized under section 1003(g) of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These final requirements make changes to the current SIG program requirements and implement language in the Consolidated Appropriations Act, 2014, that allows local educational agencies (LEAs) to implement additional interventions, provides flexibility for rural LEAs, and extends the grant period from three to five years. Additionally, the final requirements make changes that reflect lessons learned from four years of SIG implementation.

DATES: These requirements are effective March 11, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ross, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C116, Washington, DC 20202. Telephone: (202) 260–8961 or by email: *Elizabeth.Ross@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: These final requirements implement language in the Consolidated Appropriations Act, 2014, to allow LEAs to implement evidence-based, whole-school reform strategies and State-determined school improvement intervention models, to provide flexibility for rural LEAs implementing a SIG intervention, and to extend the allowable grant period from three to five years. Additionally, the final requirements make changes that reflect lessons learned from four years of SIG implementation. This regulatory action is authorized by the Consolidated Appropriations Act, 2014, and 20 U.S.C. 6303(g).

Summary of the Major Provisions of This Regulatory Action: As discussed in more depth in the notice of proposed requirements (NPR) published in the **Federal Register** on September 8, 2014 (79 FR 53254), the Department makes the following revisions to the current SIG requirements to implement language in the Consolidated Appropriations Act, 2014: Allowing five-year SIG awards; adding State-determined school improvement intervention models; adding evidence-based, whole-school reform models; and allowing rural LEAs to modify one SIG intervention model element.

The Department also revises the current SIG requirements to strengthen program implementation based on lessons learned and input from stakeholders by: Adding an intervention model that focuses on improving educational outcomes in preschool and early grades; adding an LEA requirement to demonstrate the appropriateness of the chosen intervention model and to take into consideration family and community input in the selection of the model; adding an LEA requirement to continuously engage families and the community throughout implementation; adding an LEA requirement to monitor and support intervention implementation; adding an LEA requirement to regularly review external providers' performance and hold external providers accountable; eliminating the ''rule of nine''; and revising reporting requirements.

The Department also made revisions to clarify the current SIG requirements: Modifying the teacher and principal evaluation and support system requirements under the transformation model; clarifying the rigorous review process under the restart model; clarifying renewal criteria; defining ''greatest need'' to include priority and focus schools for SEAs with approved ESEA flexibility requests; clarifying the timeline under which previously implemented interventions (in whole or in part) may continue as part of a SIG intervention; and clarifying requirements related to the posting of LEAs' SIG applications.

Additionally, the Department has removed references to fiscal year 2009 and fiscal year 2010 funds and the differentiated accountability pilot because those references are no longer necessary.

Finally, and as described in more detail in the *Analysis of Comments and Changes* section of this notice, the Department has made three additional changes to the proposed requirements in these final requirements in response to comments. First, the Department has clarified the name of the evidence-based, whole-school reform model. Second, the Department has clarified that an SEA may take into account, in awarding SIG funds, the extent to which an LEA demonstrates that it will implement one or more evidence-based strategies as part of the intervention model. Third, the Department has modified the definition of ''whole-school reform model developer'' to eliminate the provision that allowed an entity or individual to serve as a whole-school reform model developer if it had a high-quality plan for implementation and to require a developer to have a record of success implementing a whole-school reform model in a low-performing school and to be selected through a rigorous review process that includes a determination that the entity or individual is likely to produce strong results for the school.

Finally, and as described in more detail in the *Analysis of Comments and Changes* section of this notice, the Department has made two other changes to the proposed requirements based on the Consolidated and Further Continuing Appropriations Act, 2015, which Congress enacted after the publication of the NPR. First, the Department has aligned the requirement for evidence of effectiveness in the evidence-based, whole-school reform model with the definition of ''moderate level of evidence'' in the Education Department General Administrative Regulations, specifically by requiring that evidence of effectiveness include at least one study, rather than two studies, that meets the What Works Clearinghouse evidence standards. Second, the Department has modified the State-determined model to require that an SEA's proposed model meet the definition of ''whole-school reform model.''

Costs and Benefits: The Department believes that the benefits of this regulatory action outweigh any associated costs to SEAs and LEAs, which would be financed with grant funds. The benefits of this action will be more effective State and local actions, using Federal funds, to turn around their lowest-performing schools and achieve significant improvement in educational outcomes for the students attending those schools. Please refer to the *Regulatory Impact Analysis* in this document for a more detailed discussion of costs and benefits.

Consistent with Executive Order 12866, the Secretary has determined that this action is economically significant and, thus, is subject to review by the Office of Management and Budget under the order.

Purpose of Program: In conjunction with title I funds for school improvement reserved under section 1003(a) of the ESEA, SIG funds under section 1003(g) of the ESEA are used to improve student achievement in title I schools identified for improvement, corrective action, or restructuring so as to enable those schools to make adequate yearly progress (AYP) and exit improvement status.

Program Authority: 20 U.S.C. 6303(g); Consolidated Appropriations Act, 2014 (Pub. L. 113–76).

We published a notice of proposed requirements for this program in the **Federal Register** on September 8, 2014 (79 FR 53254). That notice contained background information and our reasons for the revisions to the existing SIG requirements.

There are differences between the proposed requirements and these final requirements as discussed in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the NPR, 235 parties submitted comments on the proposed requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the requirements since publication of the notice of proposed requirements follows.

Allowing Five-Year Grant Awards

Comment: Many commenters supported the proposal to allow an SEA to make a SIG award to an LEA for up to five years, including the Department's proposal to permit an LEA to use one year for planning and other pre-implementation activities. Many of these commenters stated that they believed a planning year would provide LEAs with needed additional time and resources to prepare for school turnaround efforts and would lead to increased sustainability of reforms among schools receiving SIG funds. One commenter recommended allowing an LEA to use SIG funds for two years of planning and pre-implementation activities, rather than one year.

Discussion: We appreciate the strong support for the proposal to allow grant awards of up to five years, consistent with the Consolidated Appropriations Act, 2014, and agree with the commenters that planning is imperative to successful implementation of turnaround strategies. We believe one year of funding is sufficient for planning purposes under the SIG program, which is intended not to serve as a long-term funding stream but, rather, to provide a short-term infusion of funds for comprehensive and rapid school turnaround. We note, however, that an LEA may also use SIG funds for the planning or other pre-implementation activities it undertakes between the time it receives a SIG award and the beginning of the first grant year.

Changes: None.

Comment: Two commenters requested that we allow an LEA to use SIG funds during the planning period for activities that involve assessing and addressing issues with the schools that feed students into an eligible school.

Discussion: Under section 1003(g) of the ESEA and section I.A.1 of these final requirements, an LEA may use SIG funds only in a SIG-eligible school. It may not use SIG funds to serve a school not receiving a SIG grant that feeds students into a SIG eligible school. Of course, if a school that feeds students into a SIG-eligible school is itself eligible for SIG funds, an LEA may separately seek SIG funds to support interventions in that school.

Changes: None.

Comment: A number of commenters recommended that the Department require LEAs to undertake needs analyses during a planning year. One such commenter suggested that if an LEA chooses to use the first year of its SIG award for planning, that LEA should require all SIG schools to conduct both comprehensive diagnostic needs and capacity assessments to serve as the basis for targeting student supports. Another commenter recommended that the Department require LEAs to provide evidence that they conducted an asset analysis prior to implementation, in order to identify the skills, people, and organizations in the community that can contribute resources and expertise in the design of the selected intervention. Another commenter suggested including, as part of the needs analysis, an analysis of the health needs of the community. Another commenter recommended requiring an SEA, either before or during the planning year, to assess the school's and LEA's performance and capacity to implement a SIG model in order to determine whether the LEA is able to make changes to support implementation. That commenter asked the Department to provide specific tools or criteria to support an SEA's assessment of district readiness. Finally, one commenter recommended strengthening the monitoring of both LEAs and of schools, including an assessment of LEA capacity during a planning year or pre-implementation period to ensure that the LEA is making the changes needed to support full and effective implementation of the selected model.

Discussion: We agree that an LEA should identify the needs of the individual schools it proposes to serve with SIG funds. Under section I.A.4(a)(1), each LEA applying to implement a SIG model in a school must use a needs analysis to ensure that the intervention to be implemented in the school will meet the specific needs of the school, which may include needs for academic and non-academic support. We do not believe it is necessary to require additional needs analyses, capacity assessments, or corresponding monitoring because the needs assessment requirement in section I.A.4(a)(1) is sufficient to ensure that each LEA reviews the particular needs in its schools.

Although the needs analysis required under section I.A.4(a)(1) must be conducted as part of the application process and prior to receipt of SIG funds, an LEA may use the SIG funds it receives to conduct additional needs assessment activities, including, for example, more comprehensive diagnostic analyses, capacity and asset assessments, and assessments of students' health needs, so long as those activities are a part of the LEA's approved SIG application, are related to the implementation of the SIG model, and are reasonable and necessary. Additionally, an SEA may use its section 1003(a) funds or the SIG funds it reserves for administration, evaluation, and technical assistance expenses to support the costs of needs analyses by its LEAs with SIG schools. Because not all LEAs will benefit from each of these activities, we decline to require them.

We also agree that an SEA should continue to monitor and work with its LEAs and schools to ensure they possess the capacity to implement a SIG model prior to awarding funds, including by providing specific tools that an LEA can use in assessing and building capacity. To that end, we note that, under section I.A.4(b), an SEA must consider the LEA's capacity to implement the chosen

intervention and may only fund an LEA that it determines can implement fully and effectively the chosen intervention.

Changes: None.

Comment: Two commenters requested that the Department clarify the deadline by which an LEA implementing the turnaround or transformation model must replace the principal if the LEA receives funds for a planning year.

Discussion: Under section I.A.4(a)(3), an LEA implementing the turnaround or transformation model in a school must replace the principal prior to the start of the first year of full implementation of the chosen SIG model. Accordingly, an LEA receiving a SIG award that includes a year of planning must replace the principal prior to the start of the first year of full implementation (*i.e.,* prior to the start of the second grant year). That said, we strongly encourage an LEA implementing the turnaround or transformation model to replace the school's principal as early as possible (consistent with applicable State and local laws and requirements) so that the incoming principal can prepare to lead the full and effective implementation of the model in the school.

Changes: None.

Comment: One commenter asked if an LEA may use the planning year to identify the model it will implement in a school.

Discussion: An LEA must identify the SIG model it intends to implement in a school in its application to the SEA. The planning year is intended to provide the LEA with time and resources to prepare to fully implement that specific model.

Changes: None.

Comment: Several commenters recommended that the Department clarify, in light of the authority for SEAs to make SIG awards for up to five years, the maximum amount of SIG funds an LEA may receive per year per school; and several commenters requested that the Department clarify whether the annual per-school cap of $2 million allows an LEA to receive up to $10 million for a school implementing a model over five years. One commenter also recommended that the Department specify the maximum amount of funds that an LEA may use for both a year of planning and pre-implementation activities and for a year of activities to sustain reforms following full implementation.

Discussion: Section II.B.8 permits an LEA to receive up to $2 million per year per each school implementing an intervention model. Accordingly, an LEA may receive up to $10 million total for such a school over five years.

We do not believe it is worthwhile to place a limit on the amount of SIG funds an LEA may use for a year of planning and pre-implementation activities or for a year of activities to sustain reforms following full implementation, and would expect that in either case the amount needed by an LEA is significantly less than the $2 million per year that it is eligible to receive. We remind SEAs and LEAs that an LEA may receive funds only for activities that are a part of the LEA's approved SIG application, are related to the implementation of the SIG model, and are reasonable and necessary.

Changes: None.

Comment: One commenter asked whether the Department will require SEAs to frontload SIG awards to LEAs or whether SEAs could provide the first year of funding from fiscal year 2014 SIG funds and make annual continuation awards thereafter.

Discussion: The Department does not require an SEA to frontload SIG awards.

Changes: None.

Comment: A few commenters suggested that the Department allow SEAs to provide more than five years of SIG funding to an LEA for a school. Another commenter suggested allowing two one-year renewal periods in addition to the five-year award permitted under the proposed requirements. Another commenter recommended that, for purposes of sustainability, an SEA should be permitted to renew an LEA's SIG award for each school for up to four additional one-year periods after at least three years of full intervention implementation. This commenter also recommended reducing the level of funding for each subsequent, additional one-year period, in order to support sustainability.

Discussion: Through the Consolidated Appropriations Act, 2014, Congress allows SEAs to make SIG awards to LEAs for up to five years per school, notwithstanding section 1003(g)(5)(C) of the ESEA, which allows LEAs to receive two years of SIG funds, in addition to the currently allowable three years, for a school if the school is meeting improvement goals. Therefore, the Department cannot allow an SEA to make SIG awards beyond a five-year period, which includes any renewal years. Moreover, the goal of the SIG program is to support rigorous interventions aimed at turning around our Nation's persistently lowest-achieving schools, such that these schools will be able to sustain the reforms beyond five years without SIG funding, and not to provide continuous support.

Changes: None.

Adding State-Determined School Improvement Intervention Models

Comment: Numerous commenters expressed support for the addition of a State-determined intervention model and for the alignment between the requirements of the State-determined model and the ESEA flexibility turnaround principles. A number of commenters suggested general modifications to the State-determined model requirement. These suggestions included: Allowing State-determined models that are already approved under ESEA flexibility; allowing State-determined models to address school performance in schools that are a part of the same feeder pattern; allowing an SEA without ESEA flexibility to implement a State-determined model based on the turnaround principles; allowing LEAs to propose State-determined models to their SEA; allowing an SEA to submit a State-determined model that includes a menu of strategies from which LEAs may select, in partnership with the SEA, based on need; requiring a State-determined model to be based on substantial evidence; allowing an SEA to add requirements to the State-determined model; and requiring alignment between the proposed State-determined model and the statewide systems of differentiated recognition, accountability, and support that SEAs are implementing under ESEA flexibility. Numerous commenters also recommended that the Department add specific requirements to the turnaround principles required under the State-determined model, including a requirement: To focus on physical fitness, health education, and nutrition; to conduct a school and community assets and needs assessment to identify students' social, emotional, and health needs; if principal replacement is necessary, to appoint a new principal based on a track record of success with similar schools and an ability to demonstrate the necessary leadership competencies; and that school safety and discipline interventions included in State-determined models be evidence-based.

We also received several comments asking for changes to the turnaround principles and to the requirement that a State-determined model include increased learning time (ILT). Several commenters suggested it is too restrictive to require ILT in all State-determined models and requested that the ILT requirement be eliminated or modified to be less restrictive.

Several commenters expressed concern that the requirements for the

State-determined model are too numerous and too rigid, and may cause undue burden to SEAs, LEAs, and schools, particularly SEAs that are currently pursuing turnaround strategies with emphases different from those required under the State-determined model.

Discussion: We appreciate the comments on the State-determined model but do not address the comments specifically, as we are revising the model consistent with applicable legal requirements. Since the publication of the NPR, Congress enacted the Consolidated and Further Continuing Appropriations Act, 2015. In the explanatory statement accompanying the Act, which functions as a conference report under section 4 of the Consolidated and Further Continuing Appropriations Act, 2015, the House Committee on Appropriations states that the language in the NPR implementing the State-determined model did not meet congressional intent, which was to provide flexibility from the existing SIG requirements to allow LEAs to implement alternative strategies. The explanatory statement further states that the Department must ensure that the final requirements strictly adhere to the language in the Consolidated Appropriations Act, 2014. Accordingly, we are modifying the State-determined model requirements to allow an SEA to submit to the Secretary for consideration one State-determined model that meets the definition of a ''whole-school reform model'' in section I.A.3 of the final requirements and that includes, at the SEA's discretion, any other elements or strategies that the SEA determines will help improve student achievement, consistent with the explanatory statement accompanying the Consolidated and Further Continuing Appropriations Act, 2015. We note that the requirement that a State-determined model meet the definition of a ''whole-school reform model'' and include, at the SEA's discretion, any other element or strategy that an SEA determines will help improve student achievement is also consistent with language in the report that accompanied the fiscal year 2014 appropriations bill for the Department (Senate Report 113–71), in which the Senate Appropriations Committee stated that it expects that any approach taken with SIG funds will address schoolwide factors, including, for example, curriculum and instruction, social and emotional support services for students, and training and support for teachers and school leaders. We further note that an SEA that demonstrates that its proposed State-determined model meets the requirements of the evidence-based, whole-school reform model in section I.A.2(e) will not be required to make any additional demonstration for approval.

Changes: We have modified the requirements in section II.B.1(b) to permit an SEA to submit to the Secretary for approval a State-determined model that meets the definition of ''whole-school reform model'' in section I.A.3 of the final requirements and that includes, at the SEA's discretion, any other elements or strategies that the SEA determines will help improve student achievement.

Comment: A few commenters asked that the Department clarify whether an SEA could elect to make the State-determined model available to only specific schools in the State. We received a few other comments asking the same question about other models under the SIG program. Several other commenters requested flexibility to allow SEAs to give priority to selected SIG intervention models, rather than making all SIG models available to SIG applicants.

Discussion: As noted in question I–4 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an SEA may not require an LEA to implement a particular SIG model in one or more schools. Each LEA has the discretion to determine which model to implement for each school it elects to serve with SIG funds. The only exception to this is if, consistent with State law, the SEA takes over the LEA or school. Nothing in the requirements changes this rule. However, SEAs are not required to submit a State-determined model for approval by the Secretary. Under section I.A.2(g), if an SEA does not submit such a model for approval by the Secretary, an LEA in that State cannot use a State-determined model.

We also note that, as described in question I–9 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an SEA may give priority to an LEA for SIG funding based on a variety of factors including, for example, the intervention an LEA is implementing in its SIG schools.

Changes: None.

Comment: Two commenters encouraged the Department to consider two specific frameworks in reviewing State-determined models: Multi-tiered Systems of Support and A Framework for Safe and Successful Schools.

Discussion: In order to encourage an SEA to submit for consideration a State-determined model that best addresses the needs of that SEA without imposing additional requirements beyond those in section II.B.1(b), we decline to include in the requirements a specific framework that we will use in reviewing State-determined models.

Changes: None.

Comment: One commenter requested clarification as to whether an eligible online school would be able to meet the requirements of the State-determined model.

Discussion: An eligible online school would be able to meet the requirements of the State-determined model provided the LEA implementing the model in an eligible school can demonstrate that the school has met the requirements of the approved State-determined model.

Changes: None.

Comment: Several commenters recommended revising section II.B.1(b) to permit SEAs to implement more than one State-determined model, citing concerns that limiting each SEA to one State-determined model may not sufficiently account for the complexity of school turnaround and for the diversity of LEAs and schools within a State. Several commenters also suggested that limiting SEAs to one State-determined intervention model may not faithfully reflect congressional intent.

Discussion: We appreciate the commenters' concern that given the diversity of LEAs and schools within a State, an SEA may wish to make more than one State-determined model available to its LEAs and schools. We also appreciate the commenters' interest in ensuring that we are correctly interpreting congressional intent. Nevertheless, our reading of the pertinent language included in the Consolidated Appropriations Act, 2014, and 20 U.S.C. 6303(g), ''[t]hat funds available for school improvement grants may be used by a local educational agency to implement *an* alternative State-determined school improvement strategy . . .'' (emphasis added), directs us to authorize each State to implement one State-determined model.

Changes: None.

Adding Evidence-Based, Whole-School Reform Strategies

Comment: Two commenters suggested that the Department clarify that an LEA may implement an evidence-based, whole-school reform model independently of the other SIG intervention models. The commenters intimated that this clarification is needed because the Department referred in the NPR to this type of SIG intervention as a strategy but referred to

the other types of interventions as models.

Discussion: Consistent with the Consolidated Appropriations Act, 2014, an LEA may use SIG funds to implement an evidence-based, whole-school reform model in partnership with a whole-school reform model developer and is not required to implement such a model within or together with another SIG intervention model. We are making technical changes to provide the suggested clarification.

Changes: As needed throughout the final requirements, we have replaced references to ''whole-school reform strategy'' with ''whole-school reform model'' and references to ''strategy developer'' with ''whole-school reform model developer.''

Comment: A number of commenters expressed support for the inclusion in the SIG program of evidence-based, whole-school reform models; however, several of the commenters recommended that the Department lower or eliminate the evidence requirements for these models, asserting that the requirements are more stringent than intended by Congress or would result in too few whole-school reform models available to LEAs. Some of these commenters recommended that the Department allow LEAs to implement whole-school reform models supported by only a single study that meets What Works Clearinghouse evidence standards with or without reservations (*i.e.,* a qualifying experimental or quasi-experimental study) and found a statistically significant favorable impact on a student academic achievement or attainment outcome, instead of at least two such studies. Some commenters also recommended that we allow or require SEAs to prioritize funding for whole-school reform models supported by more than one such study over those with only a single study. In a similar vein, other commenters recommended that the Department allow an exception to the evidence requirements for a whole-school reform model that is supported by a single study that found extraordinarily large impacts of the model on academic achievement or attainment, for which a second study is underway that would potentially meet the requirements, or that is otherwise promising.

Discussion: Since the publication of the NPR, Congress enacted the Consolidated and Further Continuing Appropriations Act, 2015, which modifies the language in the Consolidated Appropriations Act, 2014, by requiring that the evidence-based, whole-school reform model be based on evidence of effectiveness that includes at least one study instead of two studies. Based on this change, we are modifying the final requirements to align the requirement for evidence of effectiveness required under the evidence-based, whole-school reform model with the definition of ''moderate level of evidence'' in 34 CFR 77.1.[1] We note that, as described in question I–9 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an SEA may create priorities within its application process to, for example, prioritize applications for whole-school reform models that are supported by more than one study.

Changes: We have modified the requirements for evidence of effectiveness for the evidence-based, whole-school reform model under section I.A.2(e)(1) to require that evidence of effectiveness include at least one study, rather than two studies, that meets the What Works Clearinghouse evidence standards and by requiring that if the study meets the What Works Clearinghouse evidence standards with reservations, it include a large sample and a multi-site sample as defined in 34 CFR 77.1.

Comment: One commenter recommended that the Department allow, as evidence-based, whole-school reform models, combinations of discrete practices or interventions that individually meet the evidence requirements for these models (and that together would potentially meet requirements in the definition of ''whole-school reform model'') but do not have evidence of effectiveness when implemented together.

Discussion: We believe that, in allowing an LEA to implement, in partnership with a model developer, a whole-school reform model that is based on at least a moderate level of evidence that the model will have a statistically significant effect on student outcomes, Congress intended to require evidence of effectiveness for a model as implemented as a whole, not for the individual practices or interventions that may comprise a model as implemented separately. Accordingly, we do not believe it is appropriate to consider such ''bundles'' of evidence-based practices or interventions as evidence-based, whole-school reform models. We note, however, that an LEA is not prohibited from implementing one or more evidence-based practices or interventions under another SIG intervention model, and in fact, we encourage SEAs to prioritize LEAs that do so when making SIG awards.

Changes: None.

Comment: One commenter recommended that, to ensure whole-school reform models are supported by evidence that conforms to current research standards, the Department specify that the evidence for these models must be consistent with the principles of scientific research as defined in the Strengthening Education through Research Act (H.R. 4366), a bill to reauthorize the Education Sciences Reform Act of 2002, currently under consideration by Congress.

Discussion: The evidence requirements for the whole-school reform model in these final requirements incorporate evidence standards used by the Department's What Works Clearinghouse to assess the quality of research on policies and practices across the educational spectrum. We believe that these existing standards are sufficient to ensure that the evidence supporting whole-school reform models under SIG is rigorous and reflects current standards of practice in educational research. We note that the standards recommended by the commenter are found in pending legislation and there is no guarantee that Congress will adopt them.

Changes: None.

Comment: Two commenters expressed concerns that requirements in the definition of ''whole-school reform model'' are unnecessarily restrictive. Specifically, the commenters opposed, or recommended changes to, the requirement that a whole-school reform model be designed to be implemented for all students in a school, on the grounds that it would exclude models

[1] The Department previously invited strategy developers and other entities to submit prospective strategies and research studies of the effectiveness of those strategies for review against the requirements for the evidence-based, whole-school reform strategy in the NPR. Based on the revisions to the evidence requirements described in this paragraph, we are re-opening the submission and review process. Accordingly, we invite model developers and other entities to submit prospective models and research studies of the effectiveness of those models for review against the revised evidence requirements in section I.A.2(e)(1) and the requirements of the definition of ''whole-school reform model'' in section I.A.3. If a model developer or other entity previously submitted a strategy based on the requirements set forth in the NPR, we will consider that strategy against the revised requirements. The previously submitted strategy should not be resubmitted.

We intend to identify, from among the models submitted for review, those that meet the requirements in advance of the competition for fiscal year 2014 SIG funds. An LEA seeking to use SIG funds to implement, in partnership with a model developer, an evidence-based, whole-school reform model would be permitted to choose from among the models so identified by the Department.

We will provide information regarding the submission and review of prospective models on our Web site at *www.ed.gov/programs/sif/npr-wholeschlreform.html.*

designed to be implemented for students only in a single grade or subset of grades. One of these commenters also questioned the requirement that a whole-school reform model be designed to address, at a minimum and in a comprehensive and coordinated manner: School leadership; teaching and learning in at least one full academic content area (including professional learning for educators); student non-academic support; and family and community engagement. This commenter argued that the evidence of effectiveness of a reform model should be sufficient to warrant implementation of the model in a SIG school, regardless of the model's content. The commenter also asserted that the definition of ''whole-school reform model'' is not supported by the language in the Consolidated Appropriations Act, 2014, which allows LEAs to use SIG funds to implement evidence-based, whole-school reform models.

Conversely, several commenters expressed concerns that the requirements for whole-school reform models are not sufficiently specific or stringent. One of these commenters recommended that the Department consider incorporating required elements of other SIG models into the definition of ''whole-school reform model,'' which the commenter asserted would result in increased rigor. Another commenter suggested that the Department require whole-school reform models to include student health and wellness programs, while another commenter recommended specifying that the models include professional learning for instructional support staff in addition to teachers. Lastly, one commenter suggested that an SEA would have difficulty in monitoring an LEA implementing a whole-school reform model, due to a perceived lack of specific requirements for this model.

Discussion: As stated in Senate Report 113–71 accompanying the Consolidated Appropriations Act, 2014, the Senate Appropriations Committee expects that any approach taken with SIG funds will address schoolwide factors, including, for example, curriculum and instruction, social and emotional support services for students, and training and support for teachers and school leaders. We believe that the requirements in the definition of ''whole-school reform model,'' including the requirement that a model be designed to be implemented for all students in a school (*i.e.,* in a schoolwide manner), are consistent with congressional intent as described in the Senate Committee report. In addition, we believe these requirements capture, at an appropriate level of specificity, the aspects of school operation that are most likely to affect student achievement and attainment. Accordingly, we do not believe it is necessary to incorporate into the definition of ''whole-school reform model'' specific required elements of other SIG models or other specific elements recommended by the commenters. Finally, we note that an SEA may require its LEAs to describe in their applications—which the SEA should generally use as a basis for LEA monitoring—the specific contents of selected whole-school reform models, if the SEA deems it necessary for monitoring purposes.

Changes: None.

Comment: One commenter recommended that the Department clarify, in the definition of ''whole-school reform model developer,'' what constitutes a demonstrated record of success in implementing the model. The commenter also opposed allowing the definition to be met by a developer with a high-quality plan to implement the model together with the LEA, absent a demonstrated record of success implementing the model. This commenter claimed that such a definition would allow any entity or individual to qualify as a developer, regardless of experience.

Discussion: We agree that the proposed definition of ''whole-school reform model developer'' was overly broad in that it permitted an entity or individual to qualify as a developer, regardless of experience. Accordingly, we are eliminating the option to meet the definition through a high-quality plan to implement a model.

We decline, however, to specify what constitutes a ''record of success'' because we believe the current requirement strikes the appropriate balance between requiring a demonstration of some improvement while allowing the SEA the discretion to assess the sufficiency of the individual's or entity's record. To ensure that the SEA uses a rigorous process to make this determination, however, we are clarifying in paragraph (b)(2) of the definition that the SEA must use a rigorous review process to select the individual or entity and that the process must include a determination that the individual or entity is likely to produce strong results for the school. To prevent the definition from becoming too restrictive, however, we are eliminating the requirement that the whole-school reform model developer have a record of success implementing the model that the LEA seeks to implement in a school and replacing it with a requirement that the developer have a record of success in implementing any whole-school reform model.

Changes: We have removed paragraph (b)(2) of the definition of ''whole-school reform model developer'' and adding language to final paragraph (b) of the definition to clarify the process by which an SEA must determine that a whole-school reform model developer has a demonstrated record of success. We also have changed the proposed requirement that the individual or entity have a record of success in implementing the chosen strategy to allow the individual or entity to demonstrate a record of success in implementing any whole-school reform model.

Comment: One commenter recommended that the Department require an LEA to conduct a review of the whole-school reform model developer with whom it proposes to partner to ensure that the developer meets the requirements in the definition of ''whole-school reform model developer.''

Discussion: Section II.A.2(c) requires an LEA to provide evidence of its strong commitment to implement an evidence-based, whole-school reform model through, among other things, a demonstration that it has partnered with a whole-school reform model developer as defined in section I.A(3). Additionally, section I.A.4 requires an SEA to consider the extent to which an LEA has provided such a demonstration in making an award. We believe these requirements are sufficient to ensure that an LEA's partner meets the definition of a ''whole-school reform model developer.''

Changes: None.

Comment: One commenter suggested that the Department add requirements to ensure that developers build effective relationships with the schools and communities they serve, including by building the capacity of school staff to implement the model's reforms.

Discussion: The definition of ''whole-school reform model'' includes requirements that the model be designed to address teaching and learning in at least one full academic content area (including professional learning for educators) and to address family and community engagement. We believe these requirements are adequate to ensure that an evidence-based, whole-school reform model implemented by an LEA in partnership with a developer can meaningfully involve, and be responsive to the needs of, the school's educators and the broader community and to ensure that

staff have the capacity to implement the model.

Changes: None.

Comment: One commenter suggested that, by allowing evidence-based, whole-school reform models, the Department intends to direct SIG funds toward established whole-school reform model developers. Another commenter suggested that the Department add requirements to ensure that whole-school reform model developers are not unduly compensated for services provided.

Discussion: An LEA seeking SIG funds may choose from among several intervention models and is not required to select and implement an evidence-based, whole-school reform model in partnership with a whole-school reform model developer. Moreover, as with any LEA receiving SIG funds, and consistent with question I–30 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an LEA implementing an evidence-based, whole-school reform model in partnership with a developer may use funds to cover only costs that are reasonable and necessary for implementation of the selected model.

Changes: None.

Comment: One commenter expressed support for the requirement for an SEA to evaluate, when considering the strength of an LEA's commitment, the extent to which the LEA demonstrates in its application that the evidence for its selected whole-school reform model includes a sample population or setting similar to the population or setting of the school to be served. However, this commenter expressed concern that the requirement might prevent certain LEAs from implementing an evidence-based, whole-school reform model. Specifically, the commenter suggested that a rural LEA would be prevented from implementing a whole-school reform model if the evidence for the model did not include a rural setting. Another commenter likewise expressed support for the requirement, but cautioned that the demonstrations required of LEAs might be unduly burdensome and, therefore, deter LEAs from selecting an evidence-based, whole-school reform model.

Discussion: We believe that the commenters' concerns are unwarranted. Insofar as whole-school reform models are designed to be implemented in low-performing schools, we expect that an LEA should generally be able to demonstrate successfully a similarity between the SIG school it proposes to serve, including a SIG school in a rural LEA, and the schools in the samples of the research supporting the evidence-based, whole-school reform model. Of course, an LEA should be careful to ensure that a prospective whole-school reform model is appropriate for a school in light of its characteristics. It would likely be inappropriate, for instance, to implement a secondary school whole-school reform model in an elementary school, or a whole-school reform model for schools with high concentrations of English learners in a school with few such students.

In addition, we believe that any additional burden associated with the demonstration required would be outweighed by the benefits of implementing reforms that have been shown through rigorous research to be effective in improving student achievement and attainment.

Changes: None.

Comment: One commenter recommended that we permit an LEA seeking to implement an evidence-based, whole-school reform model to use SIG funds to partner with a community-based organization to implement out-of-school programming that complements and reinforces the selected whole-school reform model.

Discussion: An LEA implementing an evidence-based, whole-school reform model in partnership with a whole-school reform model developer is not prohibited under the requirements from using SIG funds also to partner with another organization to provide out-of-school programming, provided the LEA has received sufficient funds to do so.

Changes: None.

Rural LEAs' Modification of One SIG Intervention Model Element

Comment: Many commenters supported the proposal to permit an LEA that is eligible for services under subpart 1 or 2 of part B of title VI of the ESEA (rural LEA) to modify one element of the turnaround or transformation model and the proposal to collect data on the number of rural LEAs that implement SIG models with modified elements. Several commenters recommended extending the proposed flexibility for rural LEAs to the early learning model, in addition to the turnaround and transformation models. These commenters stated that for the same reasons that schools in rural LEAs need flexibility in implementing the transformation and turnaround models, these schools need flexibility in implementing the early learning model.

Discussion: We appreciate the commenters' support for the rural flexibility, which is consistent with language in the Consolidated Appropriations Act, 2014. We believe that this rural flexibility should apply to the existing turnaround and transformation models to ensure that a rural LEA is able to implement successfully existing SIG models, despite potential capacity issues and other challenges. Through the rural flexibility, we recognize that a rural LEA may not be in a position to implement each element of the turnaround or transformation model because, for example, it lacks a pool of high-quality school leaders from which it can choose a principal replacement. The rural flexibility provides a rural LEA with an alternate method to meet the leadership requirements of the turnaround and transformation models.

In designing the new models, we built in sufficient flexibility such that the rural flexibility is not necessary to make these models available to rural LEAs. The new models offer a broader array of intervention strategies among which a rural LEA may select the one that best fits the unique context and needs of its schools, based in part on the district's capacity to implement the model. The addition of these new models, along with the rural flexibility provided in the turnaround and transformation models, should offer enough options such that a rural LEA is able to select and successfully implement an appropriate SIG model.

Changes: None.

Comment: One commenter recommended that the Department allow a rural LEA to modify more than one SIG intervention model element.

Discussion: The requirements allowing a rural LEA to modify just one element of a model are consistent with the language in the Consolidated Appropriations Act, 2014, which states that a rural LEA may modify ''not more than one'' element of a SIG intervention model.

Changes: None.

Comment: One commenter expressed concern that a non-rural LEA may perceive the element that a rural LEA chooses to modify as less essential to the intervention model as a whole. Another commenter recommended that an LEA only be permitted to modify an element based on the LEA's specific needs and context, rather than any element that the LEA fears is too difficult or controversial to implement.

Discussion: We appreciate that allowing rural LEAs to modify an element of the turnaround or transformation model could create the perception that those elements are not necessary to successfully turn around a school. We believe, however, that rural LEAs face unique challenges and that increased flexibility will help those

LEAs successfully turn around low-achieving schools. By requiring rural LEAs to demonstrate that they will meet the intent and purpose of the original element, we believe that they will maintain the integrity of the turnaround and transformation models.

Changes: None.

Comment: One commenter recommended providing flexibility for rural schools in non-rural LEAs.

Discussion: The proposed requirement permitting a rural LEA to modify one SIG intervention model element is consistent with the Consolidated Appropriations Act, 2014, which requires that this flexibility apply to an LEA that is eligible under subpart 1 or 2 of part B of title VI of the ESEA.

Changes: None.

Comment: One commenter requested that the Department help build State and local capacity for supporting sustained rural school improvement.

Discussion: We understand that some rural areas face unique challenges in turning around low-achieving schools, but we believe that the significant amount of funding available to implement the SIG models, as well as the new flexibility extended to rural LEAs, will help these LEAs and schools to overcome the resource limitations and capacity issues that have hindered successful rural school reform. We intend to continue to provide technical assistance to rural LEAs and schools on successful SIG implementation.

Changes: None.

Comment: One commenter requested that the Department provide a rationale for requiring SEAs to report on the number of schools implementing models with a modified element. Another commenter asked that the Department require SEAs to make publicly available on the SEA's Web site information about schools in rural LEAs implementing SIG models with modified elements.

Discussion: Under section III.A(3) of the requirements, an SEA must report data on the number of rural schools implementing models with a modified element. We believe that these reporting requirements are necessary to ensure that the public and the Department have sufficient information to understand how the rural flexibility is being applied, and that they do not impose an unjustified or significant burden on SEAs.

An SEA is required to post on its Web site, within 30 days of awarding SIG funds, all approved LEA applications. Because a rural LEA requesting to modify an element of a SIG model must demonstrate in its application how it will meet the intent and purpose of the original element, information about rural LEAs and any modifications to the models they are implementing will be available as part of the LEA's application on the SEA's Web site.

Changes: None.

Comment: One commenter requested that the Department provide additional examples of elements that a rural LEA may request to modify, beyond replacing the principal.

Discussion: We intend to issue guidance to assist SEAs and LEAs in implementing the rural flexibility. We encourage each rural LEA to take into account local context and need in making the decision regarding which element, if any, to modify.

Changes: None.

Adding Early Learning Model

Comment: Several commenters supported the addition of the early learning model. One commenter believed that research in this area is undeniable and that the challenge in implementing high-quality preschool programs has been a lack of funding, which the early learning model can address for LEAs that choose this model. Other commenters noted that research shows the achievement gap begins before kindergarten and that investments in high-quality early learning programs help children from low-income families prepare for success in kindergarten. Another commenter particularly applauded the emphasis on all domains of development, not just academic, in the early learning model.

Discussion: We appreciate the commenters' support. We believe the early learning model can lead to both short- and long-term positive outcomes for all children in a SIG school implementing this model, including, but not limited to, improved academic achievement, social development, lower rates of grade retention and placement in special education, and improved graduation rates. Educational improvement strategies that focus on preschool and the early grades can address the persistent and large achievement gaps by race and income that are evident upon kindergarten entry, often well entrenched by third grade, and that negatively affect both individual student outcomes in later grades and overall school performance.

Changes: None.

Comment: Many of the commenters offering support for the addition of the early learning model submitted substantially identical requests to add a new requirement to section I.A.2(f) of the proposed requirements that would require an LEA implementing the proposed early learning model to provide a high-quality, evidence-based literacy intervention (that has at least two pieces of evidence of effectiveness) for students who, after one year in school, are identified as being at risk of literacy failure (using a reliable and valid screener).

Discussion: We believe that there are a number of important activities that would be appropriate to address in an early learning model. We agree that early literacy interventions, particularly those that are evidence-based, can be an effective component of a broader strategy to turn around low-performing schools along with strategies that address social and emotional development, early math and science, and other domains of early development. Nothing in the proposed requirements would prevent an LEA from implementing such an intervention under any of the models. However, to permit LEAs flexibility to select those interventions that best address their local needs, we decline to require LEAs to implement an evidence-based literacy intervention under this model.

Changes: None.

Comment: One commenter asked for clarification about how the preschool requirements proposed for the early learning model are similar to or different from current guidelines for title I schools.

Discussion: The Department's non-regulatory guidance, *Serving Preschool Children Through Title I Part A of the Elementary and Secondary Education Act of 1965, as Amended,*[2] is primarily focused on helping SEAs and LEAs understand how they may use ESEA title I, part A funds to support preschool programs consistent with all applicable statutory and regulatory requirements. Like all non-regulatory guidance, it does not impose any additional requirements on SEAs or LEAs beyond those of existing law and regulations. For example, the title I preschool non-regulatory guidance describes how title I funds may be used to support preschool programs and services for eligible children in the context of title I schoolwide programs, targeted assistance programs, and districtwide preschool programs. It also clarifies such issues as which children are eligible to participate in title I-funded preschool programs, the qualifications of teachers and paraprofessionals working in such programs, requirements for parental involvement in title I preschool programs, and the applicability of supplement-not-supplant provisions. In other words, the

[2] Available at: *http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf.*

title I preschool non-regulatory guidance mainly addresses compliance with applicable requirements of title I, part A of the ESEA, rather than the implementation of high-quality preschool programs.

The requirements of the new early learning model in the SIG program relating to high-quality preschool programs are based closely on the related requirements in the Department's Preschool Development Grants program, which defines ''high-quality preschool program'' to include elements that research suggests are most effective in promoting school readiness and improving long-term educational and life outcomes, especially for children from low-income families. More information on the Preschool Development Grants program may be found at *http://www2.ed.gov/programs/preschooldevelopmentgrants/index.html.*

Changes: None.

Comment: Several commenters suggested that the Department add requirements within the early learning model to ensure adequate family and community engagement. One commenter suggested the Department require that professional development for all staff under this model include high-impact strategies for family engagement. Another commenter encouraged the Department to add a requirement in the early learning intervention model that the grantee design and implement initiatives and strategies that build the capacity of school staff and families to engage in effective partnerships that support student achievement and healthy development. A few commenters requested that the definition of a ''high-quality preschool program'' be modified to include continuous and meaningful family and community engagement and proposed definitions for this term.

Discussion: The Department agrees that family and community engagement, both on an ongoing basis and in selection of the appropriate SIG model, is an essential component to ensure successful turnaround of the lowest performing schools. As such, under sections I.A.4(a)(1) and I.A.4(a)(8), an SEA must consider the extent to which an LEA has demonstrated that it engaged families and the community in the selection of the SIG model and how the LEA will meaningfully engage families and the community on a continuous basis throughout implementation. These requirements apply across all models, including the early learning model. While we agree that family and community engagement may be one valuable area of professional development, we decline to add a specific requirement for professional development or capacity building regarding family and community engagement so that LEAs may determine which types of professional development and capacity building activities to offer based on the particular needs of their schools and communities.

Changes: None.

Comment: Several commenters requested that the Department clarify that a high-quality, community-based provider may provide preschool services as part of the early learning model, either at the SIG school or through an existing high-quality child care or Head Start program within the LEA or nearby community. Many of these commenters argued that clarifying this aspect of implementation of the early learning model would help align SIG with other Department programs, such as the Preschool Development Grants and title I programs, through which the Department has encouraged mixed-delivery models for preschool services. Some commenters noted that allowing a community-based provider to provide preschool services as part of an early learning model is consistent with many LEAs' provision of preschool services, including services that are supported with title I funds, and that existing providers may be better equipped to rapidly expand capacity and serve additional children, particularly because of their working knowledge of the community. One commenter hypothesized that explicitly allowing LEAs to partner with those existing programs to provide preschool services could help make the early learning model more attractive to LEAs.

A couple of commenters recommended that if a SIG elementary school contracts with a child care or Head Start program to deliver preschool services, it should be required to describe how it will work to coordinate with the school on appropriate and effective transitions to build continuity of high-quality early learning. One commenter specifically suggested that libraries be listed as an eligible entity and allowable partner under the proposed early learning model. One commenter requested that the Department add a new element to the early learning model, requiring partnerships with external providers, such as community-based organizations and community-based media outlets, in order to increase the quality of the early learning program and its connections to the larger community.

Discussion: As part of its implementation of the early learning model, an LEA may contract with a community-based provider to provide high-quality preschool programs for students enrolled in an elementary school implementing the model. This is consistent with the SIG program in general, which allows the use of external providers and other community-based organizations under any of the SIG models. Any SIG school working with a community-based provider should ensure coordination across all grades in the elementary school, including preschool, to ensure continuity of high-quality early learning and appropriateness of transitions. The Department will provide additional guidance to help LEAs and schools work with community-based providers to provide high-quality preschool programs as part of the comprehensive early learning model. LEAs may choose to use an external provider in implementing their early learning models, or enter into a partnership with various entities, such as school libraries. However, the Department's intent is to provide sufficient flexibility for LEAs, so that they may take into account the local context and needs of the community to the greatest extent possible and, therefore, the Department declines to revise the proposed requirements based on these comments.

Changes: None.

Comment: One commenter requested that we require curricula in the early learning model that employ high-quality multiplatform digital content and services.

Discussion: The Department is prohibited from mandating State, LEA, or school curriculum under 20 U.S.C. 7907. We therefore decline to make the commenter's suggested change.

Changes: None.

Comment: A few commenters asked if a preschool must be physically located in the eligible elementary school and whether the preschool could be a feeder preschool for several schools, including the SIG-eligible school.

Discussion: A preschool is not required to be physically located in the eligible elementary school. However, students must be enrolled in the SIG school that is implementing the early learning model to receive preschool services funded through the SIG program.

Changes: None.

Comment: One commenter suggested that we require an LEA to describe in its SIG application how the impact of high-quality early learning experiences will be sustained over time.

Discussion: Under section I.A.4(a)(12), an SEA must evaluate the extent to which an LEA demonstrates in its application for a SIG award that it

will sustain the reforms after the funding period ends. We believe this existing requirement is responsive to the commenter's suggestion.

Changes: None.

Comment: Several commenters noted concerns about relying on early learning as the sole focus of a school's turnaround strategy. One commenter recommended adopting the early learning model as a turnaround strategy only in conjunction with at least one other strategy. Another commenter recommended that the Department require LEAs to demonstrate how an early learning model will complement and be linked to a school's other reform strategies, particularly efforts to ensure that children read at grade level by the third grade. One commenter noted that it is unclear which requirements in the model apply across the whole school as opposed to just the early grades being added to the school. Specifically, the commenter thought it was unclear if the requirement to implement staff retention strategies, such as the provision of financial incentives and increased opportunities for promotion and career growth, applied to all grades or only the early grades. This commenter was concerned that the SEA may not be able to allocate enough funds to an LEA to implement the many requirements with fidelity in all grades while adding new early learning services to the school.

Discussion: We recognize that early learning is only one strategy to turn around the persistently lowest-performing schools. As such, the early learning model includes requirements similar to those of the current transformation model to ensure all students across all grades in the elementary school are receiving services. For example, the model requires an LEA to implement rigorous, transparent, and equitable evaluation and support systems for teachers and principals; implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions; and use data to identify and implement an instructional program that is research-based, developmentally appropriate, and vertically aligned from one grade to the next. In this way, the early learning model is analogous to the other SIG models in that it is a comprehensive whole-school reform model. The early learning model requirements in section I.A.2(f)(1)(C) and sections I.A.2(f)(2)–(9) apply across the whole school, and we encourage each LEA implementing the early learning model to coordinate services across all grades in the school. An LEA may receive up to $2 million per year per school implementing the early learning model, which we believe is sufficient to implement the early learning model requirements with fidelity.

Changes: None.

Comment: Many commenters encouraged the Department to include evidence-based home visiting services, either directly or through partnerships and contracts, as either an allowable or required activity under the early learning model. Commenters contended that well-designed home visiting systems improve child and family outcomes and increase parents' ability to support their children's development and success. A few of those commenters noted that adding this requirement would align SIG with other Department efforts and that some LEAs already use title I funds to provide home visiting services prior to school entry. Another commenter suggested that evidence-based home visiting should be an allowable activity under the definition of ILT and that this activity would be less costly than other activities required under ILT.

Discussion: We agree that evidence-based home visiting services can be a valuable component of any school turnaround model. As such, home visiting is an allowable activity under all of the SIG models, although it does not meet the definition of ILT. To ensure continued flexibility regarding allowable uses of funds under the SIG program, we decline to reduce State and local discretion by adding a requirement that an LEA implementing the early learning model must provide home visiting services.

Changes: None.

Comment: Several commenters opposed the requirement to replace the principal in the early learning model. Some of these commenters urged the Department to require applicants using the early learning model to provide support and professional development for principals as well as teachers, and base firing decisions only on fair and objective evaluations of the principal after the principal has been allowed time to implement the model. One commenter noted that an LEA's needs analysis may reveal that the root cause for low student achievement is a lack of access to early learning and, as such, replacing the principal may not be necessary. This commenter also noted that, as currently written, the transformation model allows for the expansion of the school program to offer full-day kindergarten or pre-kindergarten to a school without many of the restrictions detailed in the newly proposed early learning model. One commenter also suggested that the Department clarify that the principal replacement requirement in section I.A.2(f)(2) refers to the leader of the SIG-eligible school, not to the leader of the preschool.

Discussion: We understand that replacing a school principal is one of the most challenging aspects of the early learning model; however, we also know that many of our lowest-achieving schools have failed to improve without leadership changes. We continue to believe that dramatic and wholesale changes in leadership are an appropriate intervention for creating an entirely new and improved school culture. We acknowledge that it can be difficult to identify, train, and retain qualified school leaders for the lowest-performing schools, but other Federal programs, including the Turnaround School Leaders program funded with SIG national activities funds, are helping to create incentives and supports to attract, train, and reward effective principals and improve strategies for recruitment, retention, and professional development. Additionally, flexibility within section I.B.1 of the requirements permits an LEA to retain a school principal who has held the position for two years or less prior to the implementation of the SIG model. We recognize that an LEA may expand the school day to offer full-day kindergarten or pre-kindergarten in a school implementing one of the other SIG models. The addition of the early learning model, however, provides another option for LEAs to consider in determining which interventions are necessary to turn around low-performing schools. To clarify, any of the requirements of the early learning model, including the requirement to replace the principal, apply to the elementary school implementing the model, not to the leader of the preschool if the preschool is provided through a community-based provider with which the school contracts.

Changes: None.

Comment: Several commenters stated that the proposed requirements for the early learning model are too prescriptive and establish requirements that are not feasible for LEAs to implement, particularly those LEAs that do not currently offer full-day kindergarten or preschool programs. One commenter suggested removing requirements not directly related to high-quality early learning to reduce the challenges of implementation. Another commenter recommended that the Department allow SEAs to make subgrants for early learning to LEAs that do not necessarily

meet all the criteria in the requirements, so long as the SEA can demonstrate that the LEAs will meet the State's own requirements for high-quality preschool programs or meet other recognized standards of quality, to allow LEAs to phase in early learning interventions. Other commenters suggested that the model should allow for phase in of new slots for preschool students due to the challenges in, and disruption that can be caused by, implementing many reforms at the same time.

Discussion: We believe that all of the components of the early learning model, including the requirements relating to expanding high-quality preschool programs and addressing the needs of all students in the elementary school, are necessary to help ensure successful school turnaround and are feasible to implement. As with all of the SIG models, full implementation of all of the elements of the model must begin on the first day of the school year when the LEA begins full implementation. We note, however, that under section II.A.3 of the requirements, LEAs have up to one full school year for planning and pre-implementation activities, during which they could begin phasing in various components of the early learning model. We believe that this one-year period is sufficient for an LEA to prepare to implement in a high-quality manner an early learning model in a school at the start of the next school year. We also note that an LEA may choose one of the other SIG models to implement if it does not have the capacity to fully implement the early learning model.

Changes: None.

Comment: Many commenters were pleased that full-day kindergarten was included in the proposed early learning model. Several commenters proposed that the Department further define ''full-day'' kindergarten to align with the definition in the Department's Preschool Development Grants. One commenter noted that there is no standard definition of ''full-day kindergarten'' and requested that the Department adopt a definition to help ensure programs are comparable for evaluation and funding purposes and that students are receiving equitable opportunities. Another commenter recommended that we incorporate into the SIG requirements several additional definitions from the Department's Preschool Development Grant program, including the definitions of ''Early Learning Development Standards'' and ''Essential Domains of School Readiness.'' Another commenter recommended adding language to require kindergarten and early grades to meet the requirements under the definition of ''high-quality preschool,'' including the requirements that schools assign teachers with certifications and endorsements in early childhood education to the early grades. This commenter also suggested that teachers in the early grades should have credentials and professional development that recognize the specialized knowledge and skills needed to work with preschool through third-grade students.

Discussion: Unlike the Preschool Development Grants program, the early learning model under the SIG program is a comprehensive approach to whole-school turnaround. For that reason, the requirements reflect a balance between the Department's interest in encouraging the implementation of a rigorous early learning intervention, as well as coordinated services for all students in the school, and our interest in allowing LEAs the flexibility to tailor their activities to fit local needs and context. For that reason, we decline to adopt the definition of ''full-day'' kindergarten or other definitions in the Preschool Development Grants program or to otherwise expand the requirements as suggested. We also decline to expand the requirements of a high-quality preschool program to apply to kindergarten or the early grades because the requirements in section I.A.2(f)(1)(C) and sections I.A.2(f)(2)–(9) are sufficient to ensure that all students in the school, regardless of grade, will benefit from the model.

Changes: None.

Comment: Some commenters expressed support for the proposed requirement within the early learning model to provide joint planning time for educators across grades. One commenter encouraged the Department to require that the joint planning time include collaboration and professional development to ensure that educators serving in SIG schools have the capacity to serve children across the range of developmental domains. One commenter noted that it is unclear whether teachers in all grades in the elementary school are required to engage in joint planning and recommended requiring cross-grade planning for teachers teaching kindergarten through third grade.

Discussion: We agree that joint planning across grades is an essential component of any school turnaround strategy, and that this component is particularly important in models that include the provision of high-quality preschool. We confirm that, to ensure continuity across grades, cross-grade planning across all grades is required under section I.A.2(f)(1)(C). Accordingly, we decline to limit this requirement to apply only to teachers of students in kindergarten to third grade. We also note that professional development, which we expect often includes collaboration, is required under section I.A.2(f)(8) and must be designed to ensure that staff have the capacity to implement successfully the school reform strategies.

Changes: None.

Comment: One commenter encouraged the Department to study the potential impact of investing in early learning, particularly because most current turnaround metrics focus on third grade and beyond. This commenter also suggested that the current SIG metrics provide a disincentive for LEAs to choose the early learning implementation model as assessment results in grades three and up are used as the primary determinant of a turnaround model's success. The commenter suggested shifting the focus from standardized test scores to measures of professional practice, which could be used in combination with child outcome metrics. The commenter recommended that the SIG requirements explicitly authorize SEAs to adopt metrics of this kind for at least their elementary schools.

Discussion: We agree that it is important to evaluate the impact of school turnaround efforts, which is why the Department will require SEAs and schools to collect and report data on the implementation of their chosen model, including the early learning model. Standardized test scores are not the primary metric that schools and SEAs must report. Rather, they are one of a number of measures that will be used to assess whether an LEA's implementation of the chosen SIG model in a school is effective. Other measures include the absenteeism rate and number of discipline incidents. Although we do not require SEAs to report professional practice data, they are required to report on the distribution of teachers by performance level based on the LEA's teacher evaluation system, which generally includes measures of professional practice. We encourage SEAs, LEAs, and schools to collect additional data, such as professional practice data, which can help provide a more holistic picture of whether a SIG model has been effectively implemented.

Changes: None.

Comment: One commenter stated that it is unclear from the proposed requirements whether the early learning model would apply to any LEA that receives SIG funding to implement any

SIG model in an elementary school, or if it constitutes a new model for which an LEA may apply for SIG funds based on the early learning needs of its elementary schools.

Discussion: To clarify, the early learning model is a new model under the SIG requirements. An LEA implementing another model is not required to meet the requirements of the early learning model. Likewise, although current grantees may add early learning strategies, such as high-quality preschool programs or full-day kindergarten, they are not required to do so.

Changes: None.

Comment: One commenter suggested that the services of school social workers, school psychologists, and other school-employed support personnel should meet the requirements for on-site accessible comprehensive services.

Discussion: Nothing in the requirements would preclude a school from fulfilling the requirements for on-site accessible comprehensive services by using support staff employed by the school to provide such services.

Changes: None.

Comment: One commenter contended that building a preschool program in a persistently low-performing school does not address the overall academic weaknesses that were responsible for the school's identification by the State and recommended removing the early learning model and the definition of ''high-quality preschool.'' The commenter argued that the early learning strategy incorrectly places an emphasis on a new cohort of young children, rather than focusing on the current students whose underperformance is the statutory target of the SIG program.

Discussion: Consistent evidence demonstrates that participation in high-quality early learning programs can lead to both short- and long-term positive outcomes for all students.[3] We believe that, if a school focuses on improving or adding a high-quality preschool program, the positive effects will continue well into students' educational future, thus improving the overall academic weaknesses that were responsible for the school's identification by the State. By focusing on improving educational opportunities for students in the early years, schools can break the cycle of poor academic achievement before it even begins, which will then give these students a better chance at success throughout their academic careers. Further, although the early learning model's primary focus is on early learners, the model also requires interventions designed to address the needs of all students at the school. Moreover, we note that under all of the SIG models, new students enroll in the school after the school has been identified as eligible.

Changes: None.

Comment: One commenter requested that the Department require LEAs to provide early screenings for learning issues and delays in early literacy and math skill development, and provide appropriate interventions based on screening outcomes.

Discussion: We agree that providing early screenings to identify students with disabilities is a meaningful activity, and is an allowable use of SIG funds under any of the SIG models. However, to ensure schools have the flexibility to tailor their interventions to local needs, we decline to require this activity under the early learning model.

Changes: None.

Comment: One commenter suggested that the Department require that the early learning model be coordinated and integrated fully with any existing State preschool program.

Discussion: While we strongly believe that any efforts undertaken with SIG funding should closely align with turnaround work across the State and that there may be positive results from coordinating with a State's preschool program, we decline to require that the early learning model be coordinated and fully integrated with the State preschool program. Given the disparity in State requirements regarding high-quality preschool programs, such a requirement may be unduly burdensome and too difficult to ensure consistency in implementation.

Changes: None.

Comment: One commenter suggested that the Department encourage approaches and partnerships that utilize technology for personalized learning by explicitly supporting the use of digital learning in the early learning model. The commenter believed this could be especially beneficial to schools in rural areas, which, the commenter suggested, should receive priority for SIG funding.

Discussion: We agree that technology can be used to enhance personalized learning, particularly in rural areas, and digital learning is a permitted activity under the early learning model. However, we decline to specifically require digital learning. There are many valuable strategies that schools should consider in implementing a comprehensive school turnaround strategy and, therefore, we designed the models to identify general performance objectives while also maximizing an LEA's discretion to choose the strategies that meet both these general objectives and the school's particular needs. We also note that, as described in question I–9 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an SEA may give priority to an LEA for SIG funding based on a variety of factors including, for example, the rural status of the school or LEA.

Changes: None.

Modifying the Teacher and Principal Evaluation and Support System Requirements Under the Transformation Model.

Comment: A number of commenters expressed support for the proposed requirement in section I.A.2(d)(1)(A)(ii) revising the transformation model requirement for teacher and principal evaluation and support systems, with some noting that they supported the alignment between the proposed requirements for these systems and the requirements under ESEA flexibility. Other commenters supported the proposed requirement that teacher and principal evaluation and support systems use multiple measures. One commenter, however, recommended revising the requirement related to the use of data on student growth to allow, but not require, the use of multiple measures for the evaluation of teachers of tested grades and subjects (but to continue to require the use of data on student growth based on State assessments for teachers of tested grades and subjects) and to allow, but not require, alternate measures of student growth for the evaluation of teachers of non-tested grades and subjects. Another commenter recommended that the results of standardized tests should comprise only a small percentage of a teacher's evaluation. One commenter noted that the link between children's test scores and teacher and principal evaluations is not appropriate, especially for teachers of early grades.

Discussion: We appreciate the comments supporting the alignment of the requirements for educator evaluation systems under the transformation model with the requirements for these systems under ESEA flexibility. We agree that this change will reduce the burden on LEAs in SEAs with approved ESEA flexibility requests because they will not have to implement separate evaluation systems. However, to ensure that such systems are both fair to educators and contribute

[3] See ''Investing in our Future: The Evidence Base on Preschool Education'' (available at *http://fcd-us.org/sites/default/files/Evidence%20Base%20on%20Preschool%20Education%20FINAL.pdf*). Society for Research in Child Development and the Foundation for Child Development, October 2013.

to improved instruction for all students, we believe it is essential to maintain the proposed requirements for the use of multiple measures, including student growth for teachers of non-tested grades and subjects. We also believe that student growth based on State assessments should be a significant factor in evaluations of teachers of all tested grades and subjects because State assessments offer objective measures that are consistent across LEAs; while the Department has been flexible about defining what constitutes a ''significant factor,'' requiring student growth data to comprise only a small percentage of evaluations would not be consistent with this longstanding position.

Changes: None.

Comment: One commenter recommended extending the requirement for teacher and principal evaluation and support systems to the turnaround model and requiring that the systems be used for decisions about financial incentives. The commenter also recommended that the Department revise the transformation model requirements to state specifically that the use of educator evaluation and support systems in decisions about retaining staff and selecting new staff is permissible. Finally, the commenter recommended requiring an LEA implementing the early learning model in a school to use the evaluation and support system to select new staff and prevent ineffective staff from transferring to the school.

Discussion: We agree that it would be beneficial for all schools to implement teacher and principal evaluation and support systems that meet the requirements in section I.A.2(d)(1)(A)(ii) and to use the results of those systems in making personnel decisions generally, including in making decisions regarding the payment of financial incentives. We also note that implementing such an evaluation and support system is allowable under any SIG model, including the turnaround model. However, such systems generally are not designed to support the rigorous requirement for staffing changes under the turnaround model, which calls for screening and rehiring no more than 50 percent of existing staff and hiring new staff. This is why the turnaround model instead requires the use of locally adopted competencies for this purpose. However, an LEA implementing the turnaround model in a school may use the results of a teacher and principal evaluation and support system in making personnel decisions, including hiring decisions, in addition to locally adopted competencies.

We also note that an LEA implementing the transformation model already must use the results of the evaluations for personnel decisions, in accordance with section I.A.2(d)(1)(A)(ii)(6), and that an LEA implementing the early learning model already must use the results of the evaluations for personnel decisions, in accordance with section I.A.2(f)(3).

Changes: None.

Eliminating the ''Rule of Nine''

Comment: Four commenters supported eliminating the ''rule of nine,'' while one commenter disagreed with the elimination of this rule, based on the original premise that it promoted the selection of the most rigorous SIG interventions (*i.e.,* turnaround and restart), which the commenter believed are more likely to result in improved student performance.

Discussion: We appreciate the support for the elimination of the ''rule of nine,'' and note that, as stated in the NPR, it had limited impact. In addition, we believe that a rule limiting the specific interventions that an LEA may implement is inconsistent with the intent of Congress as demonstrated by the increased flexibility in the selection and implementation of SIG-funded intervention models provided in the Consolidated Appropriations Act, 2014.

Changes: None.

Adding LEA Requirement To Demonstrate Appropriateness of Chosen Intervention Model and Take Into Consideration Family and Community Input

Comment: Many commenters supported proposed section I.A.4(a)(1), requiring an LEA to demonstrate the appropriateness of the chosen intervention model and to take into consideration family and community input in model selection. One commenter suggested that the Department require an LEA to demonstrate that it sought ''broad-based'' input from families and the community. Other commenters recommended requiring an LEA to engage and solicit input from all relevant stakeholders.

However, one commenter opposed requiring an LEA to demonstrate in its application how it will meaningfully engage families and the community in the implementation of its chosen intervention, warning that the need to provide evidence of parent investment up front could prevent successful alternative operators (which we interpret to mean external providers) from working with SIG schools.

Discussion: We appreciate the support for the requirements to demonstrate the appropriateness of the chosen intervention model and to take into consideration family and community input in the selection of the SIG model. However, we decline to set forth specific criteria that an LEA must meet to demonstrate family and community engagement, because the precise nature of such engagement may vary widely across different types of communities. However, we intend to provide guidance encouraging SEAs, in their review of the evidence of family and community engagement in an LEA's SIG application, to examine whether the LEA sought input from all relevant stakeholders, including, for example, those representing English learners and students with disabilities.

We do not agree that requiring a demonstration of parental involvement will prevent high-quality external providers from working with an LEA in SIG schools. In fact, we believe that the requirement that an LEA engage families and the community early in the process of planning its SIG intervention will result in increased transparency and accountability related to the selection of, and subsequent implementation by, external providers, which will help with implementing the model successfully.

Changes: None.

Adding LEA Requirement to Continuously Engage Families and the Community Throughout Implementation

Comment: Many commenters supported proposed section I.A.4(a)(8), requiring an LEA to demonstrate in its SIG application how the LEA will meaningfully engage families and the community in the implementation of its selected intervention. Several commenters recommended that the Department provide additional technical assistance and guidance on what constitutes meaningful family and community engagement. One commenter requested that we require that schools enter into joint use agreements with the community, for example with regard to sharing space. Another commenter recommended that the Department clarify that the purpose of engaging families and the community is to improve student achievement and healthy development. The commenter also recommended adding language throughout the requirements to emphasize that family and community engagement would be an element of each of the intervention models. One commenter recommended expanding the family and community engagement requirements to promote the role of

community partners and intermediary organizations in school turnarounds, stating that such entities can provide expertise and capacity-building support essential to turning around low-performing schools.

Discussion: We agree that it is important that an LEA engage in meaningful family and community engagement, reach appropriate stakeholders, and ensure that the input the LEA receives is relevant and useful throughout the period of SIG implementation. We believe, however, that section I.A.4(a)(8) of the requirements, along with guidance that the Department will provide on this issue, will be sufficient to help ensure that an LEA engages in an ongoing and meaningful way with families and the community throughout the implementation of each SIG-funded intervention model. We also note that both the current and proposed requirements, including the requirements for each of the intervention models, provide ample flexibility for SIG grantees to partner with the broadest possible range of entities to obtain the support needed for successful implementation of their selected intervention models permitting, for example, specific interventions focused on improving student performance and encouraging healthy development of students. For these reasons, we decline to make the changes recommended by the commenters.

Changes: None.

Comment: One commenter recommended requiring an SEA to report on how a SIG grantee obtains and uses family input during the implementation of its intervention model.

Discussion: We believe that adding new reporting requirements related to family and community engagement would be unnecessarily burdensome because the data on family and community engagement lacks uniformity. We also believe that such an addition would be unnecessary because the new application requirements in section I.A.4(a)(1) related to family and community engagement are sufficient to ensure that LEAs meaningfully seek and incorporate this input into the selection and implementation of SIG-funded intervention models.

Changes: None.

Comment: One commenter requested clarification regarding whether the family and community engagement requirement in section I.A.2(d)(3)(A)(ii) under the transformation model differs from the family and community engagement requirement in section I.A.4(a)(8), which applies to all models.

Discussion: The provisions are the same. We elected to retain the separate requirement in the transformation model out of concern that removing it could leave the impression that the Department is no longer requiring family and community engagement under the transformation model.

Changes: None.

Adding LEA Requirement To Monitor and Support Intervention and Implementation

Comment: Several commenters supported proposed section I.A.4(a)(7), requiring an LEA to demonstrate how it will provide effective oversight and support for implementation of interventions in its schools. Some of these commenters requested guidance regarding the definition of ''monitoring'' in order to clarify what is required of LEAs, and one commenter questioned whether the requirement would be different for a charter LEA versus a traditional LEA. However, one commenter cautioned the Department not to specify how the monitoring and support should be conducted, stating that the approach will necessarily differ based on the context and capabilities of the LEA.

Discussion: We believe the proposed requirements, which would apply to regular and charter LEAs alike, sufficiently address an LEA's monitoring obligations in part because, as noted by the commenter, the monitoring approach will differ based on the context and capabilities of the LEA. However, we will work with SEAs to provide guidance and technical assistance to LEAs related to quality monitoring and the types of information SEAs and LEAs should consider in determining whether or not the LEA has adopted or should adopt a new governance structure.

Changes: None.

Adding LEA Requirements to Regularly Review External Providers' Performance and Hold External Providers Accountable

Comment: Several commenters supported proposed section I.A.4(a)(4), requiring an LEA to regularly review external providers' performance and hold external providers accountable. One commenter also recommended requiring evidence that the LEA will recruit, screen, select, and execute contracts with any providers by the start of the school year. Similarly, another commenter recommended that the Department encourage LEAs to develop performance metrics with all providers at the onset of the partnership. One commenter, while supportive of the requirements, expressed concern about the capacity of smaller LEAs to engage in appropriate oversight and to identify appropriate providers. Additionally, one commenter requested more guidance for schools and LEAs on this issue.

Discussion: We appreciate the support for requiring LEAs to hold external providers accountable for their performance.

We recognize that an LEA may not have identified the external provider it will use at the time it applies for a SIG award; consequently, under section I.A.4(a)(4), the LEA must demonstrate that it will recruit, screen, and select external providers to ensure their quality and regularly review and hold the external providers accountable. We believe this requirement is sufficient to ensure that an LEA uses external providers effectively. We also believe that most LEAs will use the pre-implementation or planning period to recruit and select external providers and develop the performance metrics against which the external provider will be evaluated. Moreover, under section I.A.4(a)(3), any external provider that will be used to implement the chosen SIG model must be in place on the first day of the first school year of full implementation.

We acknowledge that smaller LEAs may face capacity challenges and caution LEAs to assess their ability to hold external providers accountable before committing to use them. We believe, however that the significant amount of SIG funding available to implement the intervention models will help these LEAs overcome any such limitations.

We have previously issued guidance on external providers, available at *http://www2.ed.gov/programs/sif/sigfaq-finalversion.doc.* We intend to issue additional guidance to assist SEAs and LEAs in carrying out the requirements pertaining to external providers.

Changes: None.

Comment: One commenter requested clarification about which vendors the Department is referencing.

Discussion: We understand this comment to ask to which external providers the requirements apply. All external providers that an LEA uses to help implement any aspect of a SIG model, regardless of the model being implemented, are subject to section I.A.4(a)(4).

Changes: None.

Comment: One commenter opposed proposed section I.A.4(a)(4) regarding external providers out of apparent concern that it would change eligibility and could permit the award of SIG funds to entities other than school

districts. This commenter stated that funds should flow from States to school districts.

Discussion: The commenter misunderstood the proposed requirement, as only LEAs with schools that meet the definition under I.A.1 are eligible for an award of SIG funds.

Changes: None.

Clarifying the Rigorous Review Process Under the Restart Model

Comment: Many commenters expressed support for the clarification of the rigorous review process in the restart model. One of these commenters asked that we require an LEA applying to implement the restart model to seek community input prior to choosing a charter operator. Another commenter recommended that we restrict selection of charter management organizations (CMOs) or education management organization (EMOs) further by prohibiting an LEA from contracting with a CMO or EMO with a track record of operating schools that do not improve student achievement or with significant compliance issues in the areas of civil rights, financial management, and student safety.

Discussion: We agree that an LEA implementing the restart model should seek family and community input prior to implementing the model. In fact, under section I.A.4(a)(1) of the requirements, an SEA must evaluate the extent to which an LEA demonstrates in its application for a SIG award that it took into consideration family and community input in selecting the intervention for each school. We believe this provision creates sufficient safeguards to ensure that the community is involved in the selection of an appropriate intervention in a school. Additionally, section I.A.2(b)(1) requires an LEA to consider the extent to which any schools currently operated or managed by the selected charter school operator, CMO, or EMO have produced strong results over the prior three years, which creates sufficient safeguards to ensure that the LEA takes appropriate steps to choose a high-quality CMO or EMO.

Changes: None.

Comment: One commenter asked the Department to clarify whether, under the rigorous review process, an LEA with eligible schools that is in corrective action could meet the new rigorous review requirements and serve as a CMO under the restart model.

Discussion: If an LEA can demonstrate that it has produced strong results over the past three years, despite being designated for corrective action, it may meet the requirements of the rigorous review process and serve as a CMO under the restart model. Such a demonstration may be possible, for example, for an LEA that has regularly raised student proficiency rates but still falls short of the 100 percent proficiency requirement under current law in a State that is not approved for ESEA flexibility.

Changes: None.

Defining ''Greatest Need'' To Include Priority Schools and Focus Schools for SEAs With Approved ESEA Flexibility Requests

Comment: Four commenters supported aligning the definition of ''greatest need'' with ESEA flexibility. One commenter recommended that the Department permit SEAs to limit SIG eligibility to priority schools only, in order to ensure that limited SIG funding is used in a State's lowest-achieving schools.

Discussion: We appreciate the support for aligning the eligibility provisions of the SIG requirements with ESEA flexibility for those SEAs with approved ESEA flexibility requests. As described in question I–9 of the March 1, 2012, SIG Guidance, available at *http://www2.ed.gov/programs/sif/sigguidance03012012.doc,* an SEA may create priorities within its application process to, for example, ensure an even distribution of urban and rural schools, incentivize evidence-based strategies, and encourage applications from LEAs without prior compliance issues.

With regard to the comment that we should permit an SEA to provide SIG funds to priority schools only, we note that under section II.B.7, an SEA must, in making funding decisions, give priority to LEAs with priority schools, and that under section II.A.7 an LEA must apply to serve all of its priority schools before it may apply to serve one or more focus schools. Accordingly, a focus school may be served under SIG only if the LEA in which it is located is already serving all of its priority schools (or the LEA has no priority schools) and the SEA has already funded all LEAs with priority schools that submit approvable SIG applications.

Changes: None.

Comment: One commenter requested clarification as to whether a priority school implementing a SIG intervention model may exit priority status while receiving SIG funds. Another commenter asked whether receipt of a SIG award releases the school from the State's priority school requirements and allows it to instead implement a SIG model.

Discussion: In general, a school receiving a SIG grant would be deemed to be meeting the priority school requirements of ESEA flexibility and would not have to begin or continue separate implementation of a priority school intervention under the State's approved ESEA flexibility request, unless the SEA has imposed additional requirements. A priority school that has begun implementing either a priority intervention or a SIG intervention may exit priority status but must continue to implement the intervention fully and effectively for the required three years, consistent with section II.A.4 of the requirements.

Changes: None.

Revising Reporting Requirements

Comment: Several commenters supported the proposal to replace the truancy data reporting requirement with a requirement to report data on ''chronic absenteeism.'' One commenter recommended that the Department hold LEAs and schools implementing SIG models accountable for addressing chronic absenteeism, such as by requiring LEAs to use the data to trigger action when students reach a certain threshold of absences.

Discussion: We appreciate the support for the change from truancy data to data on chronic absenteeism. We note that an LEA implementing a SIG model in a school may choose to use chronic absenteeism data to trigger specific interventions; for example, analyzing attendance data and using the results of the analysis to target interventions would be consistent with the expectation that each LEA implementing a SIG model in a school take steps to improve attendance rates at that school. We decline, however, to add this requirement to any of the models because we believe that each model offers a comprehensive approach to school turnaround, including through non-academic supports, and that therefore a separate requirement regarding attendance is not necessary.

Changes: None.

Comment: Many commenters recommended changing the chronic absenteeism measure from a certain number of days to a percentage of days enrolled, specifically from 15 days to 10 percent of days enrolled.

Discussion: We recognize that when absenteeism is being used for early intervention purposes, many authorities recommend that it is best measured as a percentage, comparing the days missed to the days of school already held. However, we have also determined that many LEAs can collect and report data on the number of days

missed by each individual student more accurately than they can calculate percentages due to the nature of the data collection, and thus decline to change the proposed measure at this time. Nonetheless, the Department is continuing outreach and analysis to determine the most reliable, valid, and least burdensome chronic absenteeism metric and may modify the current measure in the future if it determines another measure, such as a percentage based measure, is more appropriate.

Changes: None.

Comment: One commenter recommended that the Department require LEAs to report school-level data by subgroup on the following metrics: (1) Graduation and dropout rates; (2) advanced course work participation rates; (3) college enrollment rates; (4) discipline incidents; and (5) chronic absenteeism rates. This commenter also recommended adding a metric for college persistence rates, as well as the number and percentage of students participating in advanced course work. Lastly, the commenter recommended that the metric for the distribution of teachers by performance level on an LEA's teacher evaluation system also include the distribution of teachers (1) in their first or second year of teaching; (2) for whom there is insufficient data to receive a rating within the LEA's teacher evaluation system; and (3) teaching outside of their certification area.

Discussion: We agree that disaggregated reporting of key participation, attainment, and outcome measures, along with information on the distribution of effective teachers, is a useful and important method for identifying disparities in educational opportunities and outcomes. However, we decline to require LEAs to report on the measures recommended by the commenter due to a combination of (1) concerns over the validity and reliability of reporting data on small populations, such as subgroups within a school or even a district; (2) the availability of data on postsecondary outcomes; and (3) a longstanding emphasis on minimizing data collection and reporting burdens on schools, LEAs, and SEAs.

Changes: None.

Comment: One commenter recommended that the Department use the Civil Rights Data Collection (CRDC) as the data source for discipline incidents rather than ED*Facts.* The commenter stated that using the CRDC data would reveal disparities in discipline rates among students of color and students with disabilities compared to their peers and provide more actionable data for schools in their school improvement efforts.

Discussion: We recognize the value of the detailed data collected and reported via the CRDC, including discipline data. However, because the CRDC is collected biannually, using CRDC data instead of ED*Facts* data would support less frequent analysis and use of data by schools implementing school improvement models.

Changes: None.

Requests To Add Additional Models

Comment: Many commenters submitted substantially similar requests to add a new ''community schools'' model to the list of models eligible for funding under the SIG program. Commenters generally defined this model as the leveraging of community resources to provide culturally relevant and rigorous curricula; extended-day instruction; wrap-around supports addressing the physical health, mental health, and social and emotional needs of students; effective professional development for all teachers and staff; positive discipline and social development practices; and strong family and community engagement. More than half of these commenters also recommended making community schools the only turnaround model eligible for SIG funding.

Discussion: We agree that the community schools concept can be an effective strategy for building broad support for comprehensive, community-based efforts to turn around low-performing schools. This is why, as noted by one commenter, the 2009 SIG requirements included the similar ''community-oriented schools'' strategy as a permissible element of the transformation model. Another commenter also recognized the integration of the community schools strategy into the transformation model, observing that the most frequently adopted model (the transformation model) is the one that most closely resembles the community schools concept. Moreover, we believe that the community schools approach is not only fully consistent with the transformation model, but also provides a framework for successful implementation of other existing SIG models, including the turnaround and restart models, as well as the new State-determined model. This is a key reason for the new requirement in section I.A.4(a)(8) that SEAs consider the extent to which an LEA's application for SIG funds, regardless of the model selected, demonstrates how the LEA will meaningfully engage families and the community throughout implementation.

We do not believe, however, that the community schools strategy, by itself, would be sufficient to ensure that communities and schools undertake the kind of rigorous, transformational changes required to break the cycle of failure in our lowest-performing schools and maximize the effective use of taxpayer dollars under the SIG program. SIG performance data suggest that the schools adopting the most rigorous interventions, such as changes in leadership and staffing under the turnaround model and new school management under the restart model, generate the highest gains in student achievement. For these reasons, we decline to make ''community schools'' a new model eligible for funding under the SIG program or to make it the sole model eligible for new SIG funds.

Changes: None.

Comment: One commenter recommended adding a new high school intervention model because, in the commenter's words, a high school diploma is the gateway to success and the ultimate goal of a K–12 education. This commenter reasoned that the proposed high school intervention model would ensure that high schools implement the strategies that are unique to them and necessary to address the misalignment between student outcomes and the needs of the twenty-first-century workforce. The commenter envisioned the high school intervention model requiring the alignment of reform between low-performing high schools and their feeder middle schools. Many of the requirements in the commenter's suggested model were similar to those in the current and newly proposed SIG models, such as: Job-embedded professional development; evaluation and support systems for teachers and principals that meet the requirements described in section I.A.2(d)(1)(A)(ii); and ILT, among others.

Discussion: We agree that graduating high school is a key to a successful career in the twenty-first century. We believe, however, that offering the commenter's proposed model would overlap with existing SIG models. In particular, there would be overlap with the transformation model, which has many of the same elements as the commenter's suggested high school intervention model. If an SEA wanted to implement a model based on the commenter's high school intervention model, it could do so under the transformation model.

Changes: None.

Request To Add New Evidence of ''Strongest Commitment''

Comment: One commenter recommended revising the evidence of strongest commitment requirement in section I.A.4(a) to include a focus on school leadership. More specifically, the commenter suggested requiring LEAs to describe the steps they will take to review the capacity of the school leader, as well as activities designed to build capacity, to lead a successful turnaround prior to full implementation of the selected intervention model. Another commenter requested clarification that the turnaround leader may be someone other than the principal.

Discussion: The requirements regarding school leadership vary among the intervention models eligible for funding under the SIG program. The turnaround and transformation models require principal replacement in recognition of the key role played by principals in leading instruction and creating a positive school culture. The restart model relies on dramatic changes in school management and leadership by a high-quality charter school operator, CMO, or EMO. The new evidence-based model may not necessarily involve changes in school leadership. With the limited exception of the State-determined model, the emphasis is on identifying a new school leader who already has demonstrated capacity to lead a school turnaround, and not on building such capacity during the planning or pre-implementation phase of a SIG grant. For this reason, we decline to make the change to section I.A.4(a) recommended by the commenter. We also note that there is nothing in the final requirements that prevents someone other than the principal from serving as the turnaround leader in a SIG school.

Changes: None.

Promoting Evidence-Based Strategies

Comment: One commenter recommended requiring that an SEA give priority in making SIG awards to applicants proposing to implement strategies proven to be effective. Other commenters recommended that the Department require LEAs to demonstrate that their proposed strategies are supported by evidence of effectiveness.

Discussion: We agree that SEAs should take into account the extent to which LEA applications for SIG funds include one or more strategies supported by evidence of effectiveness. Accordingly, we are revising section I.A.4(a) of the final requirements to require SEAs to consider such evidence in determining which LEAs have ''the strongest commitment'' to the effective use of SIG funds and section II.B to allow SEAs to prioritize LEAs that have demonstrated the greatest evidence base for their proposed strategies if funding is not sufficient to permit awards to all LEAs with approvable applications.

Changes: We have made three changes in the final requirements to address this comment. First, we added in section I.A.4(a)(13) (Evidence of strongest commitment) a requirement that the SEA, when considering the strength of the LEA's commitment, evaluate the extent to which an LEA demonstrates that it will implement, to the extent practicable, one or more evidence-based strategies (as defined in this notice). We have also added in section II.B.9(b) a requirement that, if an SEA does not have sufficient SIG funds to make awards to each LEA with eligible schools, the SEA may take into account the extent to which an LEA applying for a SIG award demonstrates in its application that it will implement one or more evidence-based strategies (as defined in this notice). Finally, in section I.A.3 we defined ''evidence-based strategy'' to mean a strategy supported by at least ''moderate evidence of effectiveness'' as defined in 34 CFR 77.1.

New Specific Improvement Strategies

Comment: Multiple commenters recommended the use of specific improvement strategies as part of the SIG program, including: offering a comprehensive summer program to students in the bottom quintile of academic performance; promoting the acquisition of 21st century skills; partnering with community-based organizations to provide additional resources and support, including before- and after-school and summer learning programs; aggregating performance data across models to support the identification of best practices, as well as the calculation of the return on investment for each model; providing additional supports to principals; purchasing technology to support a blended learning environment; providing job-embedded professional development; expanding support for charter schools; allowing magnet schools; promoting student health and school climate; strengthening current leadership and staff in turnaround schools; district-level direction in supporting the implementation of the transformation model; expanding the list of partnerships permitted under the transformation model to include behavioral and mental health agencies and providers; references to high-quality digital content and services and community-based public media outlets; greater attention to meeting students' emotional and behavioral needs; requiring data systems that track a broad range of student outcomes; and specific requirements related to a comprehensive needs assessment by LEA applicants for SIG funds.

Discussion: Nearly all of the activities and approaches recommended by the commenters are already either required or permitted under one or more of the intervention models eligible for funding under the SIG program. For example, an LEA could convert a SIG school into a magnet school, which may promote college and career readiness as well as more diverse and integrated classrooms, while still meeting all other SIG model requirements. The Department continues to endeavor to strike the right balance between rigor and flexibility in the SIG program, viewing each as equally important to the development and implementation of successful school turnaround plans. For this reason, we decline to reduce State and local discretion by adding specific requirements in the areas suggested by the commenters. We intend, however, to issue guidance that will assist SEAs and LEAs in better understanding the broad spectrum of allowable activities and uses of SIG funds.

Changes: None.

Impact of Regulatory Changes on Existing Grantees

Comment: One commenter requested that the Department clarify the impact of these requirements on existing grantees, including the use of new models.

Discussion: We intend to clarify the impact of these final requirements on existing grantees through new non-regulatory guidance. In general, we anticipate that most new requirements, including the availability of new intervention models, will apply to new SIG awards made by States with FY 2014 SIG funds. Such application of the new requirements is consistent with the fact that key changes in this notice were required in large part by the Consolidated Appropriations Act, 2014. One exception to the general rule that the new requirements will apply only to new SIG subgrantees would be that current SIG subgrantees may under certain circumstances be able to avail themselves of continued implementation and sustainability awards under the expanded five-year award period authorized by the Consolidated Appropriations Act, 2014,

and implemented through these final requirements.

Changes: None.

Excessive Regulation

Comment: Two commenters expressed general concerns about the complexity and potential administrative burden of the proposed requirements, stating that they would inhibit locally driven innovation and that the Department should regulate only where absolutely necessary.

Discussion: The Secretary agrees with the commenters on the importance of ensuring that the Department regulate only where necessary, in the least burdensome manner possible, and that special care be taken to avoid potential barriers to State and local creativity and innovation in the use of SIG funds to turn around the Nation's lowest-performing schools. The regulatory action was undertaken only in response to new legislation in the Consolidated Appropriations Act, 2014, establishing a number of new requirements for the SIG program. After careful review of the new requirements, the Department determined that new regulations were required to ensure that the requirements would be implemented in the least burdensome and most effective manner possible, consistent with congressional intent. We also made other minor changes to existing SIG regulations aimed at clarifying State and local responsibilities in the administration of the SIG program, while also eliminating certain provisions determined to be outdated or obsolete. In the case of each new requirement, the Department considered whether the desired outcome could be achieved through regulation or non-regulatory guidance, choosing to add regulatory language only where necessary.

Changes: None.

Requested Changes to Requirements Outside the Scope of the NPR

Comments: Several commenters asked the Department to change existing requirements that we did not propose to change in the NPR.

Discussion: These commenters requested that the Department make changes to SIG program requirements that were not proposed for change in the NPR. However, we stated in the NPR that we were requesting comments on the proposed revisions rather than all of the SIG program requirements. We therefore will not respond to comments on requirements that were unchanged by the NPR, as they are outside the scope of this rulemaking.

Changes: None.

Final Requirements

The Assistant Secretary for Elementary and Secondary Education establishes the following requirements for the SIG program. The Assistant Secretary may use these requirements for any year in which funds are appropriated for SIG authorized under 1003(g) of the ESEA:

I. SEA Priorities in Awarding School Improvement Grants

A. *Defining key terms.* To award School Improvement Grants to its LEAs, consistent with section 1003(g)(6) of the ESEA, an SEA must select those LEAs with the greatest need for such funds, in accordance with the requirements in paragraph I.A.1. From among the LEAs in greatest need, the SEA must select, in accordance with paragraph I.A.2, those LEAs that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to improve academic achievement. Key terms are defined as follows:

1. *Greatest need.* An LEA with the greatest need for a School Improvement Grant must have one or more schools in at least one of the categories described in section I.A.1(a)–(c), except that an LEA with the greatest need for a School Improvement Grant in a State with an approved ESEA flexibility request must have one or more schools in at least one of the categories described in section I.A.1(d)–(e):

(a) *Tier I schools:*

(1) A Tier I school is a title I school in improvement, corrective action, or restructuring that is identified by the SEA under paragraph (a)(1) of the definition of ''persistently lowest-achieving schools.''

(2) At its option, an SEA may also identify as a Tier I school an elementary school that is eligible for title I, Part A funds that—

(A)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(B) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(1)(A) of the definition of ''persistently lowest-achieving schools.''

(b) *Tier II schools:*

(1) A Tier II school is a secondary school that is eligible for, but does not receive, title I, Part A funds and is identified by the SEA under paragraph (a)(2) of the definition of ''persistently lowest-achieving schools.''

(2) At its option, an SEA may also identify as a Tier II school a secondary school that is eligible for title I, Part A funds that—

(A)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(B)(i) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(2)(A) of the definition of ''persistently lowest-achieving schools''; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(c) *Tier III schools:*

(1) A Tier III school is a title I school in improvement, corrective action, or restructuring that is not a Tier I or a Tier II school.

(2) At its option, an SEA may also identify as a Tier III school a school that is eligible for title I, Part A funds that—

(A)(i) Has not made adequate yearly progress for at least two years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(B) Does not meet the requirements to be a Tier I or Tier II school.

(3) An SEA may establish additional criteria to use in setting priorities among LEA applications for funding and to encourage LEAs to differentiate among Tier III schools in their use of School Improvement Grants funds.

(d) *Priority schools:* A priority school is a school identified as a priority school pursuant to an SEA's approved ESEA flexibility request and consistent with the ESEA flexibility definition of ''priority school.'' [4]

[4] A ''priority school'' is defined as a school that, based on the most recent data available, has been identified as among the lowest-performing schools in the State. The total number of priority schools in a State must be at least five percent of the title I schools in the State. A priority school is—

A school among the lowest five percent of title I schools in the State based on the achievement of the ''all students'' group in terms of proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the ''all students'' group;

A title I-participating or title I-eligible high school with a graduation rate less than 60 percent over a number of years; or

Continued

(e) *Focus schools:* A focus school is a school identified as a focus school pursuant to an SEA's approved ESEA flexibility request and consistent with the ESEA flexibility definition of ''focus school.'' [5]

2. *Strongest commitment.* An LEA with the strongest commitment is an LEA that agrees to implement, and demonstrates the capacity to implement fully and effectively, one of the following rigorous interventions in each Tier I and Tier II school or, for an SEA with an approved ESEA flexibility request, each priority and focus school, that the LEA commits to serve:

(a) *Turnaround model:*

(1) A turnaround model is one in which an LEA must implement each of the following elements:

(A) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully each element of the turnaround model.

(B) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students—

(i) Screen all existing staff and rehire no more than 50 percent; and

(ii) Select new staff.

(C) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school.

(D) Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies.

(E) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new ''turnaround office'' in the LEA or SEA, hire a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability.

(F) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards.

(G) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students.

(H) Establish schedules and implement strategies that provide increased learning time (as defined in these requirements).

(I) Provide appropriate social-emotional and community-oriented services and supports for students.

(2) A turnaround model may also implement other strategies such as—

(A) Any of the required and permissible activities under the transformation model; or

(B) A new school model (*e.g.,* themed, dual language academy).

(b) *Restart model:*

(1) A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides ''whole-school operation'' services to an LEA.) The rigorous review process must include a determination by the LEA that the selected charter school operator, CMO, or EMO is likely to produce strong results for the school. In making this determination, the LEA must consider the extent to which the schools currently operated or managed by the selected charter school operator, CMO, or EMO, if any, have produced strong results over the past three years (or over the life of the school, if the school has been open for fewer than three years), including—

(A) Significant improvement in academic achievement for all of the groups of students described in section 1111(b)(2)(C)(v) of the ESEA;

(B) Success in closing achievement gaps, either within schools or relative to all public elementary school and secondary school students statewide, for all of the groups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA;

(C) High school graduation rates, where applicable, that are above the average rates in the State for the groups of students described in section 1111(b)(2)(C)(v) of the ESEA; and

(D) No significant compliance issues, including in the areas of civil rights, financial management, and student safety;

(2) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(c) *School closure:* School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

(d) *Transformation model:* A transformation model is one in which an LEA implements each of the following elements:

(1) *Developing and increasing teacher and school leader effectiveness.*

(A) *Required activities.* The LEA must—

(i) Replace the principal who led the school prior to commencement of the transformation model;

(ii) Implement rigorous, transparent, and equitable evaluation and support systems for teachers and principals, designed and developed with teacher and principal involvement, that—

(*1*) Will be used for continual improvement of instruction;

(*2*) Meaningfully differentiate performance using at least three performance levels;

(*3*) Use multiple valid measures in determining performance levels, including as a significant factor data on student growth (as defined in these requirements) for all students (including English learners and students with disabilities), and other measures of professional practice (which may be gathered through multiple formats and sources), such as observations based on rigorous teacher performance standards,

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A Tier I or Tier II school under the SIG program that is using SIG funds to implement a school intervention model.

[5] A ''focus school'' is defined as a title I school in the State that, based on the most recent data available, is contributing to the achievement gap in the State. The total number of focus schools in a State must equal at least 10 percent of the title I schools in the State. A focus school is—

A school that has the largest within-school gaps between the highest-achieving subgroup or subgroups and the lowest-achieving subgroup or subgroups or, at the high school level, has the largest within-school gaps in graduation rates; or

A school that has a subgroup or subgroups with low achievement or, at the high school level, low graduation rates.

An SEA must also identify as a focus school a title I high school with a graduation rate less than 60 percent over a number of years that is not identified as a priority school.

These determinations must be based on the achievement and lack of progress over a number of years of one or more subgroups of students identified under ESEA section 1111(b)(2)(C)(v)(II) in terms of proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, or, at the high school level, graduation rates for one or more subgroups.

teacher portfolios, and student and parent surveys;

(*4*) Evaluate teachers and principals on a regular basis;

(*5*) Provide clear, timely, and useful feedback, including feedback that identifies needs and guides professional development; and

(*6*) Will be used to inform personnel decisions.

(iii) Use the teacher and principal evaluation and support system described in section I.A.2(d)(1)(A)(ii) of these requirements to identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so; and

(iv) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of students in the school, taking into consideration the results from the teacher and principal evaluation and support system described in section I.A.2(d)(1)(A)(ii) of these requirements, if applicable.

(B) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(i) Providing additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(ii) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(iii) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(2) *Comprehensive instructional reform strategies.*

(A) *Required activities.* The LEA must—

(i) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards;

(ii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students; and

(iii) Provide staff ongoing, high-quality, job-embedded professional development (*e.g.,* regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to implement successfully school reform strategies.

(B) *Permissible activities.* An LEA may also implement comprehensive instructional reform strategies, such as—

(i) Conducting periodic reviews to ensure that the instruction is implemented with fidelity to the selected curriculum, is having the intended impact on student achievement, and is modified if ineffective;

(ii) Implementing a schoolwide ''response-to-intervention'' model;

(iii) Providing additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that English learners acquire language skills to master academic content;

(iv) Using and integrating technology-based supports and interventions as part of the instructional program; and

(v) In secondary schools—

(*1*) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement; International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(*2*) Improving student transition from middle to high school through summer transition programs or freshman academies;

(*3*) Increasing graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills; or

(*4*) Establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

(3) *Increasing learning time and creating community-oriented schools.*

(A) *Required activities.* The LEA must—

(i) Establish schedules and strategies that provide increased learning time (as defined in these requirements); and

(ii) Provide ongoing mechanisms for family and community engagement.

(B) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(i) Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

(ii) Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

(iii) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

(iv) Expanding the school program to offer full-day kindergarten or pre-kindergarten.

(4) *Providing operational flexibility and sustained support.*

(A) *Required activities.* The LEA must—

(i) Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully each element of the transformation model to substantially improve student achievement outcomes and increase high school graduation rates; and

(ii) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(B) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(i) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(ii) Implementing a per-pupil, school-based budget formula that is weighted based on student needs.

(e) *Evidence-based, whole-school reform model:* An evidence-based, whole-school reform model—

(1) Is supported by evidence of effectiveness, which must include at least one study of the model that—

(A) Meets What Works Clearinghouse evidence standards with or without reservations; [6]

(B) Found a statistically significant favorable impact on a student academic achievement or attainment outcome, with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse; and

(C) If meeting What Works Clearinghouse evidence standards with reservations, includes a large sample and a multi-site sample as defined in 34 CFR 77.1 (Note: multiple studies can cumulatively meet the large and multi-site sample requirements so long as each study meets the other requirements in this section);

(2) Is a whole-school reform model as defined in these requirements; and

(3) Is implemented by the LEA in partnership with a whole-school reform model developer as defined in these requirements.

(f) *Early learning model:* An LEA implementing the early learning model in an elementary school must—

(1) Implement each of the following early learning strategies—

(A) Offer full-day kindergarten;

(B) Establish or expand a high-quality preschool program (as defined in these requirements);

(2) Provide educators, including preschool teachers, with time for joint planning across grades to facilitate effective teaching and learning and positive teacher-student interactions;

(3) Replace the principal who led the school prior to commencement of the early learning model;

(4) Implement rigorous, transparent, and equitable evaluation and support systems for teachers and principals, designed and developed with teacher and principal involvement, that meet the requirements described in section I.A.2(d)(1)(A)(ii);

(5) Use the teacher and principal evaluation and support system described in section I.A.2(d)(1)(A)(ii) of these requirements to identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(6) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of students in the school, taking into consideration the results from the teacher and principal evaluation and support system described in section I.A.2(d)(1)(A)(ii) of these requirements, if applicable;

(7) Use data to identify and implement an instructional program that—

(A) Is research-based, developmentally appropriate, and vertically aligned from one grade to the next as well as aligned with State early learning and development standards and State academic standards; and

(B) In the early grades, promotes the full range of academic content across domains of development, including math and science, language and literacy, socio-emotional skills, self-regulation, and executive functions;

(8) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the educational and developmental needs of individual students; and

(9) Provide staff ongoing, high-quality, job-embedded professional development such as coaching and mentoring (*e.g.,* regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to implement successfully school reform strategies.

(g) *Approved State-determined model:* An LEA may implement an intervention developed or adopted by its SEA that has been approved by the Secretary, consistent with section II.B.1(b).

3. *Definitions.*

Evidence-based strategy means a strategy supported by at least moderate evidence of effectiveness as defined in 34 CFR 77.1.

High-quality preschool program means an early learning program that includes structural elements that are evidence-based and nationally recognized as important for ensuring program quality, including at a minimum—

(a) High staff qualifications, including a teacher with a bachelor's degree in early childhood education or a bachelor's degree in any field with a State-approved alternate pathway, which may include coursework, clinical practice, and evidence of knowledge of content and pedagogy relating to early childhood, and teaching assistants with appropriate credentials;

(b) High-quality professional development for all staff;

(c) A child-to-instructional staff ratio of no more than 10 to 1;

(d) A class size of no more than 20 with, at a minimum, one teacher with high staff qualifications as outlined in paragraph (a) of this definition;

(e) A full-day program;

(f) Inclusion of children with disabilities to ensure access to and full participation in all opportunities;

(g) Developmentally appropriate, culturally and linguistically responsive instruction and evidence-based curricula, and learning environments that are aligned with the State early learning and development standards, for at least the year prior to kindergarten entry;

(h) Individualized accommodations and supports so that all children can access and participate fully in learning activities;

(i) Instructional staff salaries that are comparable to the salaries of local K–12 instructional staff;

(j) Program evaluation to ensure continuous improvement;

(k) On-site or accessible comprehensive services for children and community partnerships that promote families' access to services that support their children's learning and development; and

(l) Evidence-based health and safety standards.

Increased learning time means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for—

(a) Instruction in one or more core academic subjects, including English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography;

(b) Instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and

[6] What Works Clearinghouse Procedures and Standards Handbook (Version 3.0), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.*

(c) Teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[7]

Persistently lowest-achieving schools means, as determined by the State—

(a)(1) Any title I school in improvement, corrective action, or restructuring that—

(A) Is among the lowest-achieving five percent of title I schools in improvement, corrective action, or restructuring or the lowest-achieving five title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(B) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, title I funds that—

(A) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, title I funds, whichever number of schools is greater; or

(B) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(1) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(2) The school's lack of progress on those assessments over a number of years for the ''all students'' group.

Student growth means the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, *student achievement* means—

(a) For grades and subjects in which assessments are required under section 1111(b)(3) of the ESEA, a student's score on such assessments and may include other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under section 1111(b)(3) of the ESEA, alternative measures of student learning and performance, such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Whole-school reform model means a model that is designed to—

(a) Improve student academic achievement or attainment;

(b) Be implemented for all students in a school; and

(c) Address, at a minimum and in a comprehensive and coordinated manner, each of the following:

(1) School leadership.

(2) Teaching and learning in at least one full academic content area (including professional learning for educators).

(3) Student non-academic support.

(4) Family and community engagement.

Whole-school reform model developer means an entity or individual that—

(a) Maintains proprietary rights for the model; or

(b) If no entity or individual maintains proprietary rights for the model, has a demonstrated record of success in implementing a whole-school reform model (as defined in these requirements) and is selected through a rigorous review process that includes a determination that the entity or individual is likely to produce strong results for the school.

4. *Evidence of strongest commitment.*

(a) In determining the strength of an LEA's commitment to ensuring that School Improvement Grants funds are used to provide adequate resources to enable Tier I, Tier II, priority, and focus schools to improve student achievement substantially, an SEA must consider, at a minimum, the extent to which the LEA's application demonstrates that the LEA has taken, or will take, action to—

(1) In selecting the intervention for each eligible school—

(A) Ensure that the selected intervention is designed to meet the specific needs of the school, based on a needs analysis that, among other things, analyzes the needs identified by families and the community; and

(B) Take into consideration family and community input.

(2) Design and implement interventions consistent with these requirements;

(3) Use the School Improvement Grants funds to provide adequate resources and related support to each school it commits to serve in order to implement fully and effectively the selected intervention on the first day of the first school year of full implementation;

(4) Recruit, screen, and select external providers, if applicable, to ensure their quality, and regularly review and hold accountable such providers for their performance;

(5) Align other resources with the selected intervention;

(6) Modify its practices or policies, if necessary, to enable it to implement the selected intervention fully and effectively;

(7) Provide effective oversight and support for implementation of the selected intervention for each school it proposes to serve, such as by creating an LEA turnaround office;

(8) Meaningfully engage families and the community in the implementation of the selected intervention on an ongoing basis;

(9) For an LEA eligible for services under subpart 1 or 2 of part B of title VI of the ESEA that chooses to modify one element of the turnaround or transformation model under section I.B.6 of these requirements, meet the intent and purpose of that element;

(10) For an LEA that applies to implement an evidence-based, whole-school reform model in one or more eligible schools—

(A) Implement a model with evidence of effectiveness that includes a sample population or setting similar to the population or setting of the school to be served; and

(B) Partner with a whole-school reform model developer, as defined in these requirements;

(11) For an LEA that applies to implement the restart model in one or more eligible schools, conduct a rigorous review process, as described in section I.A.2(b), of the charter school operator, CMO, or EMO that it has selected to operate or manage the school or schools;

(12) Sustain the reforms after the funding period ends; and

(13) Implement, to the extent practicable, in accordance with its selected SIG intervention model, one or more evidence-based strategies (as defined in this notice).

(b) The SEA must consider the LEA's capacity to implement the interventions and may approve the LEA to serve only those Tier I, Tier II, priority, and focus schools for which the SEA determines that the LEA can implement fully and effectively one of the interventions.

B. *Providing flexibility.*

[7] Evidence from the field shows that increasing learning time in a strategic, high-quality manner is often a key element of successful school turnaround. See ''The Case for Improving and Expanding Time in School: A Review of Key Research and Practice, available at *www.timeandlearning.org/files/CaseforMoreTime_1.pdf.''* National Center on Time and Learning, April 2012.

1. An SEA may award School Improvement Grants funds to an LEA for a Tier I, Tier II, priority, or focus school that has implemented, in whole or in part, an intervention that meets the requirements under section I.A.2(a), 2(b), 2(d), 2(e), 2(f), or 2(g) of these requirements during the school year in which the LEA applies for School Improvement Grants funds or during the two school years prior to the school year in which the LEA applies for School Improvement Grants funds, so that the LEA and school can continue or complete the intervention being implemented in that school.

2. An SEA may seek a waiver from the Secretary of the requirements in section 1116(b) of the ESEA in order to permit a Tier I or Tier II title I participating school implementing an intervention that meets the requirements under section I.A.2(a), 2(b), 2(d), 2(e), 2(f), or 2(g) of these requirements in an LEA that receives a School Improvement Grant to ''start over'' in the school improvement timeline. Even though a school implementing the waiver would no longer be in improvement, corrective action, or restructuring, it may receive School Improvement Grants funds.

3. An SEA may seek a waiver from the Secretary to enable a Tier I or Tier II title I participating school that is ineligible to operate a title I schoolwide program and is operating a title I targeted assistance program to operate a schoolwide program in order to implement an intervention that meets the requirements under section I.A.2(a), 2(b), 2(d), 2(e), 2(f), or 2(g) of these requirements.

4. An SEA may seek a waiver from the Secretary to extend the period of availability of School Improvement Grants funds so as to make those funds available to the SEA and its LEAs for up to five years.

5. If an SEA does not seek a waiver under section I.B.2, 3, or 4, an LEA may seek a waiver.

6. An LEA eligible for services under subpart 1 or 2 of part B of title VI of the ESEA may modify one element of the turnaround or transformation model so long as the modification meets the intent and purpose of the original element, in accordance with section I.A.4(a)(9) of these requirements.

II. Awarding School Improvement Grants to LEAs

A. *LEA requirements.*

1. An LEA may apply for a School Improvement Grant if it receives title I, Part A funds and has one or more schools that qualify under the State's definition of a ''Tier I,'' ''Tier II,'' ''Tier III,'' ''priority,'' or ''focus'' school.

2. In its application, in addition to other information that the SEA may require, the LEA must—

(a) Identify the schools it commits to serve;

(b) Identify the intervention it will implement in each Tier I, Tier II, priority, and focus school it commits to serve;

(c) Provide evidence of its strong commitment to use School Improvement Grants funds to implement the selected intervention by addressing the factors in section I.A.4(a) of these requirements;

(d) Include a timeline delineating the steps the LEA will take to implement the selected intervention in each school identified in the LEA's application; and

(e) Include a budget indicating how it will allocate School Improvement Grants funds among the schools it commits to serve that is of sufficient size and scope and that:

(1) For each Tier I, Tier II, priority, and focus school the LEA commits to serve, ensures that the LEA can implement one of the interventions identified in sections I.A.2(a)–(b) or sections I.A.2(d)–(g) of these requirements for a minimum of three years and no more than five years; and

(2) For each Tier III school the LEA commits to serve, includes the services it will provide the school, particularly if the school meets additional criteria established by the SEA, for a minimum of three years and no more than five years.

3. An LEA that intends to use the first year of its School Improvement Grants award for planning and other pre-implementation activities for an eligible school must include in its application to the SEA a description of the activities, the timeline for implementing those activities, and a description of how those activities will lead to successful implementation of the selected intervention.

4. The LEA must serve:

(a) In an SEA with an approved ESEA flexibility request, each priority school unless the LEA demonstrates that it lacks sufficient capacity to undertake one of the interventions described in section I.A.2 of these requirements in each priority school, in which case the LEA must indicate the priority schools that it can effectively serve. An LEA may not serve with School Improvement Grants funds awarded under section 1003(g) of the ESEA a priority or focus school in which it does not implement one of the interventions identified in section I.A.2 of these requirements.

(b) In all other SEAs, each Tier I school unless the LEA demonstrates that it lacks sufficient capacity (which may be due, in part, to serving Tier II schools) to undertake one of the interventions described in section I.A.2 of these requirements in each Tier I school, in which case the LEA must indicate the Tier I schools that it can effectively serve. An LEA may not serve with School Improvement Grants funds awarded under section 1003(g) of the ESEA a Tier I or Tier II school in which it does not implement one of the interventions identified in section I.A.2 of these requirements.

5. An LEA that commits to serve schools that do not receive title I, Part A funds must ensure that each such school it serves receives all of the State and local funds it would have received in the absence of the School Improvement Grants funds.

6. An LEA in which one or more Tier I schools are located and that does not apply to serve at least one of these schools may not apply for a grant to serve only Tier III schools.

7. An LEA in which one or more priority schools are located and that does not apply to serve all of these schools may not apply for a grant to serve one or more focus schools.

8. (a) To monitor each Tier I, Tier II, priority, and focus school that receives School Improvement Grants funds, an LEA must—

(1) Establish annual goals for student achievement on the State's assessments in both reading/language arts and mathematics; and

(2) Measure progress on the leading indicators in section III of these requirements.

(b) The LEA must also meet the requirements with respect to adequate yearly progress in section 1111(b)(2) of the ESEA, if applicable.

9. An LEA must hold the charter school operator, CMO, EMO, or other external provider accountable for meeting these requirements, if applicable.

B. *SEA requirements.*

1. (a) To receive a School Improvement Grant, an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require.

(b) In its application to the Department, each SEA may submit one State-determined intervention model for the Secretary's review and approval. To be approved, a State-determined model must be a whole-school reform model as defined in these requirements and, at the SEA's discretion, may also include any other elements or strategies that the SEA determines will help improve student achievement.

2. (a) An SEA must review and approve, consistent with these requirements, an application for a School Improvement Grant that it receives from an LEA.

(b) Before approving an LEA's application, the SEA must ensure that the application meets these requirements, particularly with respect to—

(1) Whether the LEA has agreed to implement one of the interventions identified in section I.A.2 of these requirements in each Tier I and Tier II school or, for an SEA with an approved ESEA flexibility request, each priority and focus school included in its application;

(2) The extent to which the LEA's application demonstrates the LEA's strong commitment to use School Improvement Grants funds to implement the selected intervention by addressing the factors in section I.A.4 of these requirements;

(3) Whether the LEA has the capacity to implement the selected intervention fully and effectively in each school identified in its application; and

(4) Whether the LEA has submitted a budget that includes sufficient funds to implement the selected intervention fully and effectively in each school it identifies in its application.

3. An SEA may, consistent with State law, take over an LEA or specific Tier I, Tier II, priority, or focus schools in order to implement the interventions in these requirements.

4. An SEA may not require an LEA to implement a particular intervention in one or more schools unless the SEA has taken over the LEA or school.

5. To the extent that a school implementing a restart model becomes a charter school LEA, an SEA must hold the charter school LEA accountable, or ensure that the charter school authorizer holds it accountable, for complying with these requirements.

6. An SEA must post on its Web site, within 30 days of awarding School Improvement Grants to LEAs and within 30 days of approving any amendments to LEA applications, all approved LEA applications (including applications to serve Tier I, Tier II, Tier III, priority, and focus schools and approved amendments) as well as a summary of those grants that includes the following information:

(a) Name and National Center for Education Statistics (NCES) identification number of each LEA awarded a grant.

(b) Amount of each LEA's grant.

(c) Name and NCES identification number of each school to be served.

(d) Type of intervention to be implemented in each Tier I, Tier II, priority, and focus school.

7. If an SEA does not have sufficient School Improvement Grants funds to award, for at least three years, a grant to each LEA that submits an approvable application, the SEA must give priority to LEAs to serve Tier I or Tier II schools or, for an SEA with an approved ESEA flexibility request, the SEA must give priority to LEAs to serve priority schools.

8. An SEA must award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the activities required under section 1116 of the ESEA and these requirements. The LEA's total grant may not be less than $50,000 for each school it commits to serve and, for each school in which the LEA commits to fully implement an intervention that meets the requirements under section I.A.2(a), 2(b), 2(d), 2(e), 2(f), or 2(g) of these requirements, may be up to $2,000,000 per year.

9. If an SEA does not have sufficient School Improvement Grants funds to allocate to each LEA with a Tier I or Tier II school or, in an SEA with an approved ESEA flexibility request, to each LEA with a priority or focus school, an amount sufficient to enable the school to implement fully and effectively the specified intervention throughout the period of availability, including any extension afforded through a waiver, the SEA may take into account—

(a) the distribution of Tier I, Tier II, priority, and focus schools among such LEAs in the State to ensure that Tier I and Tier II schools or, in an SEA with an approved ESEA flexibility request, priority and focus schools throughout the State can be served and

(b) the extent to which an LEA applying for a SIG award demonstrates in its application that it will implement one or more evidence-based strategies (as defined in this notice) as part of the SIG intervention model it implements in a school.

10. In identifying Tier I, Tier II, priority, and focus schools in a State for purposes of allocating funds appropriated for School Improvement Grants under section 1003(g) of the ESEA, an SEA must exclude from consideration any school that was previously identified as a Tier I, Tier II, priority, or focus school and in which an LEA is implementing one of the interventions identified in these requirements using funds made available under section 1003(g) of the ESEA.

11. Before submitting its application for a School Improvement Grant to the Department, the SEA must consult with its Committee of Practitioners established under section 1903(b) of the ESEA regarding the rules and policies contained therein and may consult with other stakeholders that have an interest in its application.

C. *Renewal for additional one-year periods.*

1. An SEA must renew the School Improvement Grant for each affected LEA for additional one-year periods, subject to sections II.C.4–C.6 of these requirements, if the LEA demonstrates that its Tier I, Tier II, priority, and focus schools are meeting the annual goals for student achievement established by the LEA consistent with section II.A.8 of these requirements, and that its Tier III schools are meeting the goals established by the LEA and approved by the SEA.

2. An SEA may renew an LEA's School Improvement Grant with respect to a particular school, subject to the requirements in sections II.C.4–C.6, if the SEA determines that, with respect to that school—

(a) The school is making progress toward meeting the annual goals for student achievement established by the LEA consistent with section II.A.8 of these requirements;

(b) The school is making progress on the leading indicators in section III of these requirements;

(c) The LEA is implementing interventions in the school with fidelity to applicable requirements and to the LEA's application; or

(d) The LEA's Tier III school is making progress toward the goals established by the LEA.

3. If an SEA does not renew an LEA's School Improvement Grant with respect to a particular school, the SEA may reallocate those funds to other eligible LEAs, consistent with these requirements.

4. An SEA, prior to renewing the School Improvement Grant of an LEA that received funds for a full year of planning and other pre-implementation activities for a particular school, must review the performance of the LEA in that school during the planning year against the LEA's approved application and determine that the LEA will be able to fully implement its chosen intervention for the school on the first day of the following school year.

5. An SEA may renew an LEA's School Improvement Grant for a particular school, after three years of continuous intervention implementation in that school, after the SEA has determined that such renewal

is appropriate pursuant to the criteria in sections II.C.1–C.2 of these requirements, for up to an additional two years for continued full implementation of the intervention or for activities related to sustaining reforms in the school. An SEA may not renew an LEA's School Improvement Grant if doing so would result in more than five years of continuous School Improvement Grants funding with respect to a particular school.

6. Nothing in these requirements diminishes an SEA's authority to take appropriate enforcement action with respect to an LEA that is not complying with the terms of its grant.

D. *State reservation for administration, evaluation, and technical assistance.*

An SEA may reserve from the School Improvement Grants funds it receives under section 1003(g) of the ESEA in any given year no more than five percent for administration, evaluation, and technical assistance expenses. An SEA must describe in its application for a School Improvement Grant how the SEA will use these funds.

III. Reporting and Evaluation

A. *Reporting metrics.*

To inform and evaluate the effectiveness of the interventions identified in these requirements, the Secretary will collect data on the metrics in the following chart. Accordingly, an SEA must report only the following new data with respect to School Improvement Grants:

1. A list of the LEAs, including their NCES identification numbers, that received a School Improvement Grant under section 1003(g) of the ESEA and the amount of the grant.

2. For each LEA that received a School Improvement Grant, a list of the schools that were served, their NCES identification numbers, and the amount of funds or value of services each school received.

3. For any Tier I, Tier II, priority, or focus school, school-level data on the metrics designated on the following chart as ''SIG'' (School Improvement Grants):

Metric	Source	Achievement indicators	Leading indicators
SCHOOL DATA			
Which intervention the school used (*e.g.,* turnaround, restart, evidence-based, whole-school reform model).	SIG.		
Number of schools in rural LEAs implementing an intervention model with a modified element pursuant to section I.B.6 of these requirements.	SIG.		
Which intervention the school in a rural LEA implementing an intervention model with a modified element pursuant to section I.B.6 of these requirements used.	SIG.		
AYP status	ED*Facts*	✓	
Which AYP targets the school met and missed	ED*Facts*	✓	
School improvement status	ED*Facts*	✓	
Number of minutes within the school year	SIG		✓
STUDENT OUTCOME/ACADEMIC PROGRESS DATA			
Percentage of students at or above each proficiency level on State assessments in reading/language arts and mathematics (*e.g.,* Basic, Proficient, Advanced), by grade and by student subgroup.	ED*Facts*	✓	
Student participation rate on State assessments in reading/language arts and in mathematics, by student subgroup.	ED*Facts*		✓
Average scale scores on State assessments in reading/language arts and in mathematics, by grade, for the ''all students'' group, for each achievement quartile, and for each subgroup.	SIG	✓	
Percentage of limited English proficient students who attain English language proficiency	SIG	✓	
Graduation rate	ED*Facts*	✓	
Dropout rate	ED*Facts*		✓
Student attendance rate	SIG		✓
Number and percentage of students completing advanced coursework (*e.g.,* AP/IB), early-college high schools, or dual enrollment classes.	SIG HS only		✓
College enrollment rates	ED*Facts*	✓	
STUDENT CONNECTION AND SCHOOL CLIMATE			
Discipline incidents	ED*Facts*		✓
Chronic absenteeism rates	CRDC		✓
TALENT			
Distribution of teachers by performance level on LEA's teacher evaluation system	SIG		✓
Teacher attendance rate	SIG		✓

4. An SEA must report these metrics for the school year prior to implementing the intervention, if the data exist, to serve as a baseline, and for each year thereafter for which the SEA allocates School Improvement Grants funds under section 1003(g) of the ESEA. With respect to a school that is closed, the SEA need report only the identity of the school and the intervention taken—*i.e.,* school closure.

B. *Evaluation.*

An LEA that receives a School Improvement Grant must participate in any evaluation of that grant conducted by the Secretary.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority and these definitions, we 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 final regulatory action will have an annual effect on the economy of more than $100 million because fiscal year 2014 appropriations for the program, which the Department will award to SEAs in fiscal year 2015, are approximately $506 million. 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 regulatory action and have determined that the benefits justify the costs.

We have also reviewed this 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 final requirements only on a reasoned determination that their benefits 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 will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the potential costs and benefits and the regulatory alternatives we considered.

Summary of Potential Costs and Benefits

The Department believes that the final requirements will not impose significant costs on SEAs and LEAs that receive SIG funds. State and local costs of implementing the final requirements (including State costs of applying for grants, distributing grant funds to LEAs, ensuring compliance with the proposed requirements, and reporting to the Department; and LEA costs of applying for subgrants and implementing interventions) will be financed through grant funds. We do not believe that the final requirements will impose burden that SEAs or LEAs will need to meet from other sources.

This regulatory action will continue to drive SIG funds to LEAs that have the lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. It will also continue to require participating LEAs to adopt the most effective approaches to turning around low-achieving schools. In short, we believe that this action will ensure that limited SIG funds continue to be put to their optimum use—that is, that they are targeted to where they are most needed and used in the most effective manner possible. The benefits, then, will be more effective schools serving children from low-income families and a better education for those children.

Regulatory Alternatives Considered

As discussed elsewhere, the Department believes that the final requirements are needed to ensure that the SIG program is implemented in a manner that, among other things, is consistent with the programmatic changes made by Congress in the Consolidated Appropriations Act, 2014. One alternative to promulgation of the final requirements would be for the Department to allocate fiscal year 2014 SIG funds without establishing any new requirements governing their use. Under such an alternative, States and LEAs would need to implement the new provisions in the appropriations language without key regulatory support from the Department. For instance, each State would be responsible for ensuring, for its LEAs that seek to use SIG funds to implement an evidence-based, whole-school reform model in an eligible school, that the strategy selected by the LEA constitutes whole-school reform and is supported by at least moderate evidence of effectiveness. We do not believe that States generally possess the capacity or expertise needed to meet this responsibility with the amount of rigor expected by Congress.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action.

Expenditures are classified as transfers from the Federal Government to SEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$506.
From Whom To Whom?.	From the Federal Government to SEAs.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by OMB (School Improvement Grants OMB Control number 1810–0682). In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the School Improvement Grants regulations would not impose additional burden associated with information collection requirements.

Changes to the SEA Applications

Under final requirement section II.B.1(b), each SEA may submit, as part of the required application it submits to the Department to receive SIG funds, one State-determined intervention model for review and approval by the Secretary. These final requirements require an SEA to submit a State-determined intervention model as part of its application, if a State chooses to implement this model.

Under the burden estimates currently approved by OMB, 52 SEAs will complete, review, and post SEA and LEA applications for a total of 46,800 annual burden hours at a cost of $30 per hour, totaling an annual cost of $1,404,000. These final requirements do not change the currently approved annual burden for SEAs.

Revising Reporting Requirements

The final requirements make a number of clarifications to the reporting requirements. First, final requirement section III.A.3 eliminates the metric for ''Truants'' and replaces it with ''Chronic absenteeism rates.'' Second, final requirement III.A clarifies the correct source for each of the required metrics and removes references to the SFSF previously approved under OMB data collection 1810–0695. Finally, final requirements in section III.A.3 require an SEA to report, with respect to schools receiving SIG awards, the number of schools implementing models with a modified element pursuant to section I.B.6 and which models are being implemented in those schools.

Under the reporting burden estimates, 52 SEAs will report SEA and LEA requirements for a total of 3,640 annual burden hours at a cost of $30 per hour totaling an annual cost of $109,200. These final requirements add burden to the currently approved annual burden for SEAs.

Changes to the LEA Application

The final requirements also add to the existing requirements in section I.A.4(a) (Evidence of strongest commitment) information that, under section II.A.2(c), the LEA must include in the LEA application related to an evidence-based, whole-school reform strategy (for those LEAs that propose to implement such a strategy); meaningful family and community engagement; LEA oversight and support of SIG implementation; review of, and accountability for, external provider performance; implementation of an evidence-based strategy or strategies, if practicable; the review process for selecting a charter school operator, CMO, or EMO; and implementation of evidence-based strategies.

Under the burden estimates that are currently approved by OMB, 3,050 LEAs will complete an application for a total of 183,000 annual burden hours at a cost of $25 per hour totaling an annual cost of $4,575,000. These final requirements do not change the approved annual burden for LEAs.

Collection of Information

STATE EDUCATIONAL AGENCY ESTIMATE

SIG Activity	Number of SEAs	Hours/Activity	Hours	Cost/Hour	Cost
Complete SEA application (including requests for waivers)	52	100	5,200	$30	$156,000
Review and post LEA applications	52	800	41,600	$30	$1,248,000
Reporting	52	70	3,640	$30	$109,200
Total			50,440	$30	$1,513,200

LOCAL EDUCATIONAL AGENCY ESTIMATE

SIG Activity	Number of LEAs	Hours/Activity	Hours	Cost/Hour	Cost
Complete LEA application	3,050	60	183,000	$25	$4,575,000
Total			183,000	$25	$4,575,000

Waiver of Congressional Review Act

These regulations have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final requirements implement language in the Consolidated Appropriations Act, 2014 (Pub L. 113–76), that modifies the SIG program in substantial ways, described below. The Department must award SIG funds to State educational agencies (SEAs) in

enough time that they can conduct competitions for LEAs to apply for the SIG funds and begin implementation by the start of the 2015–2016 school year. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final requirements and make grant awards to SEAs such that there is sufficient time for them to conduct competitions. When the 60-day delayed effective date is added to the time the Department will need to receive SEA applications (approximately 30 days from the date on which these final requirements become effective), review the applications (approximately 14 days), and finally approve applications (approximately 30 days), the Department will not be able to allocate funds authorized under the Consolidated Appropriations Act, 2014, and section 1003(g) of title I of the ESEA to all qualified applicants before June 2015, leaving SEAs almost no time to conduct LEA competitions before the start of the school year. Therefore, waiting the full 60 days would cause an undue burden to SEAs and LEAs by giving them a shorter period of time to plan for and implement the new SIG requirements. With approximately $506 million at stake, the delayed effective date would be impracticable and contrary to the public interest. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-day delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

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.

Deborah Delisle,

Assistant Secretary for Elementary and Secondary Education.

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Part V

Department of Transportation

Federal Transit Administration

FTA Fiscal Year (FY) 2015 Apportionments, Allocations, and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year (FY) 2015 Apportionments, Allocations, and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act, 2015 (FY 2015 Appropriations) which provided $11.008 billion in new budget authority including a full fiscal year's funding for the Federal Transit Administration's (FTA) programs funded from the General Fund of the Treasury, which funds its administrative expenses as well as its Research, Technical Assistance and Training programs, Capital Investment Grants program, and Grants to the Washington Metropolitan Area Transit Authority. The FY 2015 Appropriations Act follows several continuing resolutions that provided funds for these programs through December 15, 2014.

The Highway and Transportation Funding Act of 2014 extended FTA's contract (budget) authority to carry out its formula assistance programs only through May 31, 2015. The act pro-rated the amount of budget authority available for the period October 1, 2014 through May 31, 2015 based on an anticipated full FY 2015 total of $8.595 billion. As a result, FTA may apportion only 8/12th or $5.722 billion in contract authority at this time. When combined with the full-year funding from the General Funded programs listed above, FTA is apportioning or allocating in this notice a total of $8.136 billion of the $11.008 billion of new budget authority provided in the FY 2015 Appropriations. Congress will have to extend the authorization for public transportation beyond May 31, 2015, before additional contract authority can be provided for the formula assistance programs.

FTA annually publishes one or more notices apportioning funds appropriated by law. This notice apportions and provides information on the FY 2015 funding currently available for FTA assistance programs, provides program guidance and requirements, and information on several program issues important in the current year. This notice also provides information on FTA's discretionary programs and forthcoming program guidance.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Jamie Pfister, Director, Office of Transit Programs, at (202) 366–2053. Please contact the appropriate FTA Regional Office for any specific requests for information or technical assistance. A list of FTA Regional Offices and contact information is available on the FTA Web site under the heading ''Regional Offices'' at *http://www.fta.dot.gov.* An FTA headquarters contact for each major program area is included in the discussion of that program in the text of the notice.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

On October 1, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) authorized the Federal Transit Administration's (FTA) public transportation assistance programs for FYs 2013–2014. A notice announcing changes and implementation instructions in FTA programs in accordance with MAP–21 was published in the **Federal Register** on October 16, 2012. (See 77 FR 63669). On August 8, 2014, Congress passed the Highway and Transportation Funding Act of 2014 (Pub. L. 113–159) which extended MAP–21 authorizations as well as contract authority to carry out FTA's formula programs through May 31, 2015. On December 16, 2014, the FY 2015 Appropriations Act (Pub. L. 113-235) was signed into law, providing a full fiscal year of funding for FTA's discretionary programs and its administrative expenses which are funded from the General Fund of the Treasury. Prior to December 16, 2014, Congress provided partial funding for FY 2015 through continuing resolutions (Pub. L. 113–164, Pub. L. 113–202, and Pub. L. 113–203). This notice apportions formula funds based on the Highway and Transportation Funding Act of 2014, which made 8/12th or $5.722 billion of the anticipated fiscal year 2015 total of $8.595 billion available through May 31, 2015. As a result, FTA may only apportion $5.722 billion to carry out FTA's formula programs at this time. Should Congress pass legislation that provides additional contract authority to support the formula programs for FY 2015, FTA will

issue a notice apportioning any amount above the $5.722 billion up to $8.595 billion, which is the obligation limitation provided for such programs in the FY 2015 Appropriations Act. In addition, this notice provides funding information for FTA's FY 2015 discretionary programs, including $2.12 billion in new budget authority for FY 2015 Capital Investment Grant (CIG) Program allocations as well as prior year discretionary programs and their unobligated balances.

The FY 2015 Appropriations also provides $150 million in new budget authority for FY 2015 for grants to the Washington Metropolitan Area Transportation Authority and $37.5 million for the Research, Technical Assistance and Training Programs. Finally, this notice provides program information, including the status of MAP–21 implementation for many of the grant programs and other regulatory requirements.

II. FY 2015 Available Funding for FTA Programs

A. Funding Based on the Consolidated Appropriations Act, 2015

The FY 2015 Appropriations Act provides $2.41 billion in new budget authority for FTA's Capital Investment Grants program, Research, Technical Assistance and Training programs, Grants to the Washington Metropolitan Transit Authority and administrative expenses in FY 2015. In addition to $2.12 billion made available to carry out the Capital Investment Grants (CIG) program, the FY 2015 Appropriations Act directs FTA to use $27.98 million in FY 2011 or prior fiscal years' unobligated discretionary bus and bus facilities funds for new bus rapid transit projects recommended in the President's FY 2015 budget submission to Congress provided that such funds are subject to the CIG Program requirements under 49 U.S.C. 5309. This brings the total funding available for CIG to $2.148 billion in FY 2015.

In addition, the Highway and Transportation Funding Act of 2014 provides $5.722 billion in contract authority derived from the Mass Transit Account of the Highway Trust Fund for the period October 1, 2014 through May 31, 2015 to carry out FTA's formula programs in FY 2015. This is in addition to over $7.92 billion in formula and bus funds that remain unobligated from prior fiscal years. FTA will issue another notice apportioning any additional FY 2015 contract authority for formula assistance programs Congress may provide beyond May 31, 2015.

B. Oversight Takedown

In order to conduct oversight activities in accordance with 49 U.S.C. 5338(i), 0.5 percent is set aside from the amounts available to carry out the Planning Programs (section 5305); the Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program (section 5310); and the Rural Areas Formula Grants Program (section 5311). In addition, 0.75 percent is set aside from amounts made available to carry out the Urbanized Area Formula Grants Programs, and the High Intensity Fixed Guideway State of Good Repair Formula Program (section 5337(c)). Additionally, one percent of the amount made available to carry out the CIG Program (section 5309) as well as one percent of the amount available for Grants to the Washington Metropolitan Area Transit Authority (section 601 of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110–432)) is set aside for FTA oversight activities.

C. FY 2015 Formula Apportionments; Data and Methodology

FTA is publishing apportionment tables on its Web site for each program that reflects the full year appropriations less oversight take-downs, as applicable. FTA is continuing to use, as it did in FYs 2013 and 2014, urbanized area and demographic data from the 2010 Census. Tables displaying the funds available to eligible states, tribes, and urbanized areas have been posted on FTA's Web site at *http://www.fta.dot.gov/apportionments.*

1. National Transit Database and Census Data Used in the FY 2015 Apportionments

Consistent with past practices, the calculations for sections 5307, 5311, including 5311(j) (''Tribal Transit''), 5329, 5337, and 5339 programs rely on the most-recent transit service data reported to the National Transit Database (NTD), which in this case is the 2013 report year. In some cases where an apportionment is based on the age of the system, the age is calculated as of September 30, 2014, which was the last day before FY 2015 began. Any recipient or beneficiary of either the section 5307 or section 5311 program funds is required to report to the NTD. Additionally, a number of transit operators report to the NTD on a voluntary basis. For the 2013 report year, the NTD includes data from 852 reporters in urbanized areas, 819 of which reported operating transit service. The NTD also includes data from 1,404 providers of rural transit service, which includes 124 Indian Tribes providing transit service.

The tiers of the sections 5303, 5305, 5307 and 5339 formulas that are based on population and population density continue to rely on data published by the 2010 Census, as required by law. Likewise, the tiers of the section 5311 formula that are based on rural population and rural land area are calculated using 2010 Census data.

The formulas for sections 5307, 5311, and 5311(j) include tiers where funding is allocated on the basis of the number of persons living in poverty, and the section 5310 formula allocates funding on the basis of the population of older adults and people with disabilities. The Census Bureau no longer publishes decennial census data on persons living in poverty and persons with disabilities. As a result, FTA uses the data for these populations available via the Census' American Community Survey (ACS).

The FY 2015 apportionments use data on low-income persons, persons with disabilities, and older adults from the 2008–2012 ACS five-year data set, which was published in December 2013. This data set provides the first estimates that are based on the new Urbanized Area boundaries from the 2010 Census. These data represent the most recent five-year ACS estimates that are available as of October 1st for the year being apportioned.

The NTD and census data that FTA used to calculate the apportionments associated with this notice can be found on FTA's Web site: *www.fta.dot.gov/apportionments.*

D. FY 2015 Discretionary Program Funding

1. Notices of Funding Availability

MAP–21 authorized several discretionary grant programs, such as the Transit-Oriented Development (TOD) Planning Pilot Program, Low or No Emissions Bus and Facilities Program, Tribal Transit Discretionary Program, and Passenger Ferry Program. FTA publishes individual Notices of Funding Availability (NOFAs), which contain specific application and eligibility information, for its discretionary programs announcing the availability of funds. However, in several cases, such as for the Workforce Development Program and the Tribal Transit Discretionary Program, FTA will use proposals received in response to the previously published FY 2014 NOFAs for purposes of allocating both FY 2014 and FY 2015 available funding. NOFAs are posted in Grants.Gov and on FTA's Web site once published in the **Federal Register**.

2. Research, Technical Assistance, and Training Program Funding

The FY 2015 Appropriations provides approximately $37.5 million for Research, Technical Assistance and Training program activities of which $30 million is available to carry out Research, Development, Demonstration, and Development projects under 49 U.S.C. 5312, and $3 million is available for Transit Cooperative Research Program activities under 49 U.S.C. 5313. In addition, $4 million is available for Technical Assistance and Standards Development under 49 U.S.C. 5314 and $500,000 is provided to carry out Human Resource and Training activities under 49 U.S.C. 5322(a) and (b). More information about these programs can be found in Section IV of this notice.

3. FY 2015 Capital Investment Grant Program Allocations

The Capital Investment Grant (CIG) Program (49 U.S.C. 5309), which historically authorizes the New and Small Starts Programs and now includes the Core Capacity Improvement Program, is excluded from the NOFA process because the program has an ongoing project development and review process, and funding is allocated consistent with information already available to FTA. By way of this notice, FTA is publishing the FY 2015 CIG Allocations table (Table 7) to its Web site for approximately $2.12 billion available in new budget authority to carry out the program. These projects were included in the FY 2015 *Annual Report on Funding Recommendations for CIG Program* published on March 3, 2014. Pursuant to FY 2015 appropriations, in addition to funds appropriated to carry out the CIG program, $27.98 million in FY 2011 and prior year unobligated or recovered section 5309 (Discretionary Bus and Bus Facilities) funds are available to carry out bus rapid transit (BRT) projects subject to the requirements of the CIG program. More information about this program can be found in Section IV of this notice.

4. Unobligated Prior Year Discretionary Allocations

FTA is posting tables of prior year discretionary allocations that remain unobligated as of September 30, 2014 to its FY 2015 Apportionments Web page. These tables can be found here: *www.fta.dot.gov/apportionments* and are numbered Tables 14–17. Each table contains information pertaining to the lapse date of these funds.

III. FY 2015 Program Highlights and Changes

A. MAP–21 Implementation

1. Guidance

A result of the MAP–21 authorization and in addition to regulatory activities, FTA is continuing to update program circulars to reflect MAP–21 changes and provide guidance for new and existing programs. Below is a chart of publication dates or expected publication dates for the program circulars. FTA publishes draft circulars for notice and comment, and takes into consideration all comments received prior to final publication. In the interim and until FTA publishes final program circulars, existing program circulars combined with the interim guidance in the October 16, 2012 apportionment notice can be used to administer the programs. FTA's electronic grant management system and financial systems both have been updated to reflect new programs and new codes provided by MAP–21. If there are additional questions about the major formula programs or grants, please contact your Regional Office or the Headquarters program contacts listed in Section IV of this notice.

Program	Actual publication date (for notice and comment)	Actual/expected publication of final circular
Urbanized Area Formula Grant Program (Section 5307)	*April 22, 2013*	*January 16, 2014.*
Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310)	*July 11, 2013*	*June 6, 2014.*
Rural Areas Formula Program (Section 5311)	*September 26, 2013*	*October 24, 2014.*
State of Good Repair Formula Program (Section 5337)	*March 4, 2014*	*January 28, 2015.*
Bus and Bus Facilities Formula Program (Section 5339)	*July 30, 2014*	Winter/Spring 2015.
Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines.	*August 13, 2014*	Winter/Spring 2015.

2. Rulemakings

On June 2, 2014, FTA and the Federal Highway Administration (FHWA) published a Notice of Proposed Rulemaking (NPRM) on Statewide and Nonmetropolitan Transportation Planning: Metropolitan Transportation programing in the **Federal Register** requesting comment on proposed revisions to the regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs, and the congestion management process. The changes reflect the new requirements for a performance based planning process required by MAP–21, and proposed that State Departments of Transportation and metropolitan planning organizations take a performance-based approach to planning and programming; a new emphasis on the nonmetropolitan transportation planning process; a structural change to the membership of larger Metropolitan Planning Organizations (MPOs); a new framework for voluntary scenario planning; and a framework for programmatic mitigation processes. The comment period for the NPRM closed on October 2, 2014. FTA and FHWA are currently reviewing approximately 160 letters from commenters. FTA expects to issue a Final Rule in 2015.

On October 3, 2013 FTA published an expansive Advanced Notice of Proposed Rulemaking (ANRPM) in the **Federal Register** requesting comment on a number of questions related to the implementation of the new requirements under MAP–21 for a National Transit Safety Plan, Agency Safety Plans, a new Safety Certification Training Program, and a new National Transit Asset Management System. The comment period for this ANPRM closed on January 2, 2014. FTA currently is reviewing approximately 2,500 pages of comments from more than 140 commenters. FTA expects to issue NPRMs on these topics in 2015.

FTA is also continuing to work with States with rail fixed guideway public transportation systems (rail transit systems) to develop and carry out State Safety Oversight (SSO) Programs consistent with the requirements of MAP–21. On October 1, 2013, FTA announced the initial certification status of each State and is now working with each State to address, among other things, identified gaps in their SSO

Programs (SSO Program or SSOP) with MAP–21 requirements and to develop work plans to address these gaps as well as enhance a State's SSOP. As of December 31, 2014, FTA had certified two states as having SSO Programs compliant with the MAP–21 statutory provisions and approved 25 Certification Work Plans. FTA expects to issue an NPRM in FY 2015 seeking comment on its plan to implement the SSO Program. Additional information on FTA's safety authority and the requirements under section 5329 can be found in Section IV of this notice.

B. Transitioning to a New Electronic Grant Management System

FTA's Transportation Electronic Award and Management (TEAM) system was opened in October 2014 for awarding grants with funds appropriated in FY 2014 or a prior fiscal year. However, FTA is planning to transition to the Transit Award Management System (TrAMS) in April, 2015 and to close TEAM for grant making on March 1, 2015.

TrAMS, by design, collects and presents information contained in new grant applications differently than TEAM, which will make it difficult to migrate applications that have not yet been awarded by March 1, 2015 into the new system. FTA has previously provided guidance that grant applications needed to be in submitted status in TEAM as of January 1, 2015 to ensure award could be made by March 1, 2015. FTA will make a concerted effort to award any other pending grant applications in TEAM by March 1, 2015. However, grant applications not awarded in TEAM by March 1 will not be migrated into TrAMS and the recipient will need to re-create their application in TrAMS.

When deployed, TrAMS aims to offer a more efficient, user-friendly, and flexible tool to award and manage grants and cooperative agreements. It seeks to provide more useful information, and will strengthen the integrity and consistency of our grant award and management process.

FTA has created a page on its Web site, *http://www.fta.dot.gov/TrAMS* to provide additional information and updates on our new grant making system. Individuals who would like access to this Web site should contact their FTA Regional Office for the password to use or send an email to *fta.trams@dot.gov.*

FTA will continue to provide training and technical assistance on using TrAMS. Training will include live, hands-on workshops, where feasible, as well as training videos and guidance and technical assistance documents. More information on upcoming training will be posted at *http://www.fta.dot.gov/TrAMS.*

FTA also will migrate data, information, and attachments about current recipients and their awarded grants (as of March 1, 2015) from TEAM into TrAMS.

In addition, in order to minimize the amount of data and information that needs to be migrated into TrAMS, FTA encourages its grantees to promptly close any awarded grants where funds are fully disbursed or where the grantees no longer plan to implement the projects funded in the grant. FTA grantees will be able to use TrAMS to manage active grants where work on the transit projects identified in the grant is ongoing. (These grants will be migrated from TEAM to TrAMS).

C. New Common Rule

On December 26, 2013 the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. Part 200 replaces the former Uniform Administrative Requirements for Grants (OMB Circular A–102 and Circular A–110 or 2 CFR part 215 or Circular) as well as the Cost Principles (Circulars A–21 or 2 CFR part 220; Circular A–87 or 2 CFR part 225; and A–122, 2 CFR 230). Additionally it replaces Circular A–133 guidance on the Single Annual Audit.

The administrative requirements and cost principles found in 2 CFR part 200 (Uniform Guidance) became effective for new awards and additional funding to existing awards on December 26, 2014. The audit requirements will apply to audits of fiscal years beginning on or after December 26, 2014. For the most part 2 CFR part 200 does not substantially change administrative requirements, cost principles and audit requirements as experienced by FTA grantees.

Except as otherwise provided in 2 CFR part 1201, which was published as an interim final rule in the **Federal Register** on December 26, 2014 and effective that same date, the Department of Transportation adopted OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. Part 1201 deviates from part 200 only with respect to standard application requirements, equipment, procurements by States, and financial reporting. In addition, part 1201 supersedes and repeals the requirements of the Department of Transportation Common Rules (49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19—Uniform Administrative Requirements—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), except that grants and cooperative agreements executed prior to December 26, 2014 shall continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements. DOT's interim final rule can be viewed at *https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform#sec-1201-102.*

FTA is working to update its guidance, FTA Circular 5010.1D, ''Grant Management Requirements'' to ensure it is consistent with the new Common Rule. As FTA is required to issue revised updated guidance through a notice and comment process, grantees may continue to follow the procedures of FTA Circular 5010.1D. However, where Circular 5010 references specific requirements of 49 CFR 18 or 19, or the old Common Rule, non-Federal entities should follow the guidance in the 2 CFR part 200 and 2 CFR part 1201 for awards or amendments made after December 26, 2014. As the following requirements are incorporated in Circular 5010 by reference, non-Federal recipients are expected to follow these requirements for new awards or amendments made after December 26, 2014:

- *Cost Principles:* Where our Circulars reference cost principles found in the former Common Rule, non-federal entities must now follow the Cost Principles in 2 CFR 200 Subpart E, unless stated otherwise in 2 CFR part 1201, for awards made after December 26, 2014.
- *Indirect Cost Rates:* Non-federal entities must follow procedures for Indirect Cost Rates found in 2 CFR 200, unless stated otherwise in 2 CFR part 1201, for awards made after December 26, 2014.
- *Audit Requirements:* Non-federal entities whose FY 2015 fiscal year starts January 1, 2015, or later, must follow the Single Annual Audit requirements of 2 CFR 200 Subpart F.

D. The Recovery Act

The American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5) appropriated $8.4 billion for three major FTA transit programs. Pursuant to ARRA, FTA had until September 30, 2010 to obligate the $8.4 billion in grants. Additionally, as a matter of law,

all remaining ARRA funds MUST be disbursed (paid) from grants by the end of the 5th fiscal year (FY) after funds were required to be obligated. (SEE 31 U.S.C. 1552.) For FTA ARRA projects, that requirement takes affect at the end of FY 2015. Accordingly, once ECHO closes for disbursements (payments) in late September 2015, all remaining unliquidated obligations within FTA ARRA funded grants will no longer be available to the grantee and will be deobligated from the grant. Even if a grantee has incurred costs or disbursed funds prior to the close of ECHO, if the grantee has not actually drawn down the funds by the time ECHO closes in late September 2015, FTA will be unable to reimburse the grantee. Therefore, grantees with open ARRA grants are strongly encouraged to ensure project activities are completed and all funds are draw down before late September 2015. For ARRA TIGER 1 projects, the same requirement will be in effect for the end of FY 2016.

E. Vanpool In-Kind Match Provision

MAP–21 amended 49 U.S.C. 5323(i) ''Government Share of Costs for Certain Projects'' to include a paragraph that allows a grantee to credit towards its local share the costs a private provider incurs when acquiring rolling stock to be used in providing public transportation in the grantee's service area. The credit in this case will be handled in a similar manner as transportation development credits (formerly known as toll revenue credits). In order to take advantage of this credit, the private provider must exclude any amounts received from the federal, state or local government when acquiring the rolling stock. To determine the amount of credit available to a grantee and to track the application of the use of van pool capital acquisition for local share, the grantee that will apply the share to a grant will be required to supply the following information in the TEAM/TrAMS grant: Vehicle Identification Number; cost/value of the van when it joined the program (including capital cost of contracting calculations if applicable); amount of federal, state or local financial assistance used to acquire the van (note that if any federal funds were used to acquire the van—then the required local share will also be deducted); amount used as credit for previous grants; the amount to be used as credit for this grant; and a copy of the Certified Statement to verify the van is being used in grantee's service area. In addition, section 5323(i)(2)(B) allows a vanpool provider to use revenues in excess of its operating costs to acquire rolling stock if the private provider and the grantee enter into an agreement that the private provider will use the rolling stock in the grantee's service area.

Grantees should contact their Regional Office for assistance if they intend to use this provision. FTA will also develop additional guidance and frequently asked questions to assist grantees with using this new match provision.

F. Flood Insurance

Recipients are reminded they need to maintain flood insurance for any building located in a special flood hazard area that received Federal financial assistance. Section 102 of the Flood Disaster Protection Act of 1973 (FDPA) prohibits the Federal government from providing funds for acquisition or construction of buildings located in a special flood hazard area (100-year flood zone) unless the owner of the property first has obtained flood insurance. FTA's Master Agreement and annual Certifications and Assurances reference FDPA and recipients agree they will have flood insurance for buildings in a special flood hazard area.

Specifically, Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building unless the recipient has first acquired flood insurance under the National Flood Insurance Act to cover the buildings constructed or repaired with Federal funds. Consistent with the Federal Emergency Management Agency's (FEMA) definition of ''building,'' FTA has defined ''building'' in its Emergency Relief program regulation at 49 CFR 602.5, for insurance purposes, as ''a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.'' In addition, where structures are both above and below ground, the flood insurance requirement applies where at least 51 percent of the cash value of the structure, less land value, is above ground.

This flood insurance requirement applies to transit facilities such as maintenance facilities, storage facilities, and above-ground stations/terminals, as well as equipment and fixtures in the facilities. It does not apply to underground subway stations, track, tunnels, ferry docks, or to any transit assets outside of a special flood hazard area.

A covered structure must be insured through the NFIP or a comparable private policy. The policy must provide coverage at least equal to the project cost for which Federal assistance is provided, or to the maximum limit of coverage available under the National Flood Insurance Act (currently $500,000 for buildings and $500,000 for equipment and fixtures), whichever amount is less. Facilities owned by state governments may be self-insured, but only where FEMA has approved the state's self-insurance policy. Private entities, and public entities other than state governments, may not self-insure and must obtain a flood insurance policy before receiving Federal funds and maintain the policy subsequent to grant award.

G. In-State or Local Geographical Preferences

As part of the Appropriations Act for 2015, Congress enacted section 418 (Section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235), which prohibits FTA from using FY 2015 funds to implement, administer, or enforce 49 CFR 18.36(c)(2) for construction hiring. Section 18.36(c)(2) prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. Effective December 26, 2014, 49 CFR part 18 will apply only to grants obligated on or before December 25, 2014. Grants obligated on or after December 26, 2014 will be subject to 2 CFR part 200. This provision (18.36(c)(2)) is codified at 2 CFR 200.319(b) and is substantively the same as 18.36(c)(2). Although Congress did not address the change in codification in section 418, FTA intends to apply section 418 to grants obligated on or after December 26, 2014 and subject to 2 CFR 200.319(b). Accordingly, grantees may include in-State or local geographic preferences in construction contracts awarded or advertised in FY2015. FTA will provide additional guidance regarding the implementation and applicability of section 418 on its Web site at *www.fta.dot.gov.* Grantees may not use section 418 to alter or amend the requirements of the Disadvantaged Business Enterprise Program.

H. Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality Improvement Program (CMAQ) Funds for Operating Assistance

In response to the modifications made by section 125 of the Consolidated Appropriations Act, 2014, Public Law 113–76, FHWA in coordination with FTA has clarified what is meant by the

provision that prohibits the imposition of a time limitation for operating assistance eligibility on a system *''for which CMAQ funding was made available, obligated or expended in fiscal year 2012.''* The phrase ''made available'' applies to projects designated for CMAQ operating assistance in fiscal year (FY) 2012 through statute or to any commitment by the party that by law selects projects for operating assistance funding so long as the commitment occurred during FY 2012. There must be official documentation demonstrating that there was a specific commitment in FY 2012 to provide CMAQ funding for operating assistance for a particular project or service. Such official documentation could include a TIP or STIP, or other State or MPO official records. The specific project or service for which the CMAQ funds are being sought for operating assistance without a time limitation must be clearly identified in this documentation. Transportation services expressly eligible for CMAQ funding under SAFETEA–LU sections 1808(g)–(k) and certain provisions in previous appropriations acts are eligible to use CMAQ funds for operating assistance without time limitations. ''Obligated'' funding occurs on the date that the funds were obligated and FTA awarded the grant. ''Expended'' funding occurs on the date that the grantee draws-down funds for eligible expenses from an FTA grant. FTA will work with grantees at the time of grant application to verify eligibility under this provision. Complete guidance regarding eligibility for operating assistance under the CMAQ Program can be found in the Revised Interim Guidance on CMAQ Operating Assistance under MAP–21, published in July 2014 and available at *http://www.fhwa.dot.gov/environment/air_quality/cmaq/.*

IV. FY 2015 Program Specific Information

This section of the notice provides the available FY 2015 funding to date and/or other important program-related information for 20 FTA programs that are contained in this notice. Funding for twelve programs is apportioned by statutory or administrative formula. Funding for the other eight programs will be allocated on a discretionary or competitive basis. Available funding and/or other important information for each of the programs is presented immediately below. This includes program apportionments or allocations, certain program requirements, length of time FY 2015 funding is available for obligation and other significant program information pertaining to FY 2015. For the formula programs, the funding represents the $5.722 billion available at this time as authorized by the Highway and Transportation Funding Act of 2014. FTA expects to publish another notice should Congress provide additional contract authority for this fiscal year.

A. Metropolitan Planning Program (49 U.S.C. 5305(d))

Section 5305(d) authorizes Federal funding to support a cooperative, continuous, and comprehensive planning program for transportation investment decision-making at the metropolitan area level. The specific requirements of metropolitan transportation planning are set forth in 49 U.S.C. 5303 and further explained in 23 CFR part 450, as incorporated by reference in 49 CFR part 613, Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule. FTA apportions funds directly to State Departments of Transportation (DOTs). State DOTs then allocate the funds to Metropolitan Planning Organizations (MPOs), for planning activities that support the economic vitality of the metropolitan area.

MAP–21 requires that the metropolitan transportation planning process must provide for the establishment of a performance-based approach to decision-making. Upon publication of a final rule on the metropolitan transportation planning program, MPOs will be required to establish specific performance targets that address transportation system performance measures (to be issued by U.S. DOT), where applicable, to use in tracking progress towards attaining critical outcomes. These performance targets will be established by MPOs in coordination with States and transit providers. MPOs also will be required to provide a system performance report that evaluates their progress in meeting the performance targets in comparison with the system performance identified in prior reports.

This funding must support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods in the metropolitan area. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. Eligible work elements or activities include, but are not limited to, studies relating to management, mobility management, planning, operations, capital requirements, and economic feasibility; evaluation of previously funded projects; peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analysis among MPOs and other transportation planners; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment; and development of coordinated public transit human services transportation plans.

During the spring of 2014, the Acting Administrators of FTA and FHWA issued a Planning Emphasis Area letter to the MPO's requesting that they include work activities in their Unified Planning Work Programs (UPWP) to advance the following activities; (1) Transition to Performance Based Planning and Programming. This involves the development and implementation of a performance management approach to transportation planning and programming that supports the achievement of transportation system performance outcomes; (2) Models of Regional Planning—Promote cooperation and coordination across MPO boundaries and across State boundaries where appropriate to ensure a regional approach to transportation planning. This is particularly important where more than one MPO or State serves an urbanized area or adjacent urbanized areas. This cooperation could occur through the metropolitan planning agreements that identify how the planning process and planning products will be coordinated, through the development of joint planning products, and/or by other locally determined means; and (3) Ladders of Opportunity—Access to essential services—USDOT is encouraging state and local decision makers to plan for transportation investments and policies that provide ''ladders of opportunity'' connecting people safely to jobs, education, and health care and other essential services and improving their quality of life.

An exhaustive list of eligible work activities is provided in FTA Circular 8100.1C, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants,* dated September 1, 2008. For more about the Metropolitan Planning Program, *contact Victor Austin, Office of Planning and Environment at (202) 366–2996 or victor.austin@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $70,931,607 for the Metropolitan Planning Program (section 5305(d)) to support metropolitan transportation planning activities set forth in section 5303. The total amount apportioned for the Metropolitan Planning Program to States for MPOs' use in urbanized areas (UZAs) is $70,576,949 as shown in the table below, after the deduction for oversight (authorized by section 5338).

METROPOLITAN PLANNING PROGRAM—FY 2015

Total Appropriation	$70,931,607
Oversight Deductions	−354,658
Total Apportioned	70,576,949

States' apportionments for this program are displayed in Table 2.

2. Basis for Allocation

Eighty percent of the funds are apportioned to the States based on the most recent decennial Census for each State's UZA population. The remaining 20 percent is provided to the States with UZAs with one million or more in population in order to address planning needs in larger, more complex UZAs.

3. Requirements

The State allocates Metropolitan Planning funds to MPOs in UZAs or portions thereof to provide funds for planning projects included in a one or two-year program of planning work activities (the Unified Planning Work Program, or UPWP). The UPWP includes multimodal systems planning activities spanning both highway and transit planning topics. Each State has either reaffirmed or developed, in consultation with their MPOs, an allocation formula among MPOs within the State, based on the 2010 Census. The allocation formula among MPOs in each State may be changed annually, but the FTA Regional Office must approve any change before grant award. Program guidance for the Metropolitan Planning Program is found in FTA Circular 8100.1C, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants,* dated September 1, 2008.

4. Period of Availability

The Metropolitan Planning program funds apportioned in this notice are available for obligation during FY 2015 plus three additional fiscal years. Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2018. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2018, will revert to FTA for reapportionment under the Metropolitan Planning program.

B. State Planning and Research Program (49 U.S.C. 5305(e))

This program provides financial assistance to States for statewide transportation planning and other technical assistance activities, including supplementing the technical assistance program provided through the Metropolitan Planning program. The specific requirements of Statewide transportation planning are set forth in 49 U.S.C. 5304 and further explained in 23 CFR part 450 as referenced in 49 CFR part 613, Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule. This funding must support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. For more information, contact *Victor Austin, Office of Planning and Environment at (202) 366–2996 or victor.austin@dot.gov.*

1. FY 2015 Funding Availability

FY 2015 Appropriations provides a total of $14,817,434 for the State Planning and Research Program (section 5305(e)). The total amount apportioned for the State Planning and Research Program (SPRP) is $14,743,347 as shown in the table below, after the deduction for oversight (authorized by section 5338).

STATEWIDE PLANNING PROGRAM—FY 2015

Total Appropriation	$14,817,434
Oversight Deductions	−74,087
Total Apportioned	14,743,347

States' apportionments for this program are displayed in Table 2.

2. Basis for Allocation

FTA apportions funds to States by a statutory formula that is based on the most recent decennial Census data available, and the State's UZA population as compared to the UZA population of all States.

3. Requirements

Funds are provided to States for statewide transportation planning programs. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, and management training. In addition, a State may authorize a portion of these funds to be used to supplement Metropolitan Planning funds allocated by the State to its UZAs, as the State deems appropriate. Program guidance for the State Planning and Research program is found in FTA Circular 8100.1C, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants,* dated September 1, 2008.

MAP–21 requires that the statewide and non-metropolitan transportation planning process must provide for the establishment and use of a performance-based approach to decision-making. Upon publication of a final rule on the statewide and non-metropolitan transportation planning program, State Departments of Transportation will be required to establish specific performance targets that address transportation system performance measures (to be issued by U.S. DOT), where applicable, to use in tracking progress towards attaining critical outcomes. These performance targets will be established by States in coordination with MPOs and transit providers. States will be encouraged to provide a system performance report that evaluates their progress in meeting the performance targets in comparison with the system performance identified in prior reports.

4. Period of Availability

The State Planning and Research program funds apportioned in this notice are available for obligation during FY 2015 plus three additional fiscal years. Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2018. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2018 will revert to FTA for reapportionment under the State Planning and Research program.

C. Urbanized Area Formula Program (49 U.S.C. 5307)

Section 5307 authorizes Federal assistance for capital, planning, job access and reverse commute projects, and, in some cases, operating assistance for public transportation in urbanized areas. An urbanized area (UZA) is an area with a population of 50,000 or more that has been defined and

designated as such by the U.S. Census Bureau.

FTA calculates an apportionment amount for each UZA based on statutory formulas. For UZAs with populations of 200,000 or more, FTA apportions funds directly to one or more designated recipients, which are local or statewide agencies designated by the governor in accordance with sections 5303 and 5304, to receive and allocate section 5307 funds to eligible public transportation projects in the UZA. For UZAs with populations between 50,000 and 200,000, FTA apportions funds directly to the governor for allocation to eligible public transportation projects in those areas of the state. Eligible funding recipients are limited to designated recipients and other local government authorities that a designated recipient or governor authorizes to apply for the funds directly to FTA.

Additional detailed guidance on the Urbanized Area Formula Program is available in FTA Circular 9030.1E, *Urbanized Area Formula Program: Program Guidance and Application Instructions,* dated January 16, 2014. This circular is in effect for all grants awarded after the date of its publication. The circular can be accessed at *www.fta.dot.gov/circulars.*

The circular contains guidance on several provisions that were established by MAP–21 and took effect beginning in FY 2013. These include a new provision allowing operating assistance for transit agencies in UZAs over 200,000 in population that operate a maximum of 100 buses in fixed route service during peak service hours, the eligibility of job access and reverse commute projects under section 5307, changes to the definition of ''capital project,'' expanded eligibility for sources of local match, and the replacement of the ''transit enhancements'' requirements with a similar ''associated transit improvements'' requirement. For more information about the Urbanized Area Formula Program contact *Adam Schildge, Office of Program Management, at (202) 366–0778 or adam.schildge@dot.gov.*

1. FY 2015 Funding Availability

FY 2015 Appropriations provides a total of $2,968,361,507 for the Urbanized Area Formula Program (section 5307). The total amount apportioned to UZAs is $3,211,537,790, which includes the addition of amounts apportioned to UZAs pursuant to the section 5340 Growing States and High Density States Formula factors. This amount excludes the set-aside for the Passenger Ferry Discretionary Program, apportionments under the State Safety Oversight Program, and funding for oversight (authorized by section 5338), as shown in the table below.

URBANIZED AREA FORMULA PROGRAM—FY 2015

Total Appropriation	[a] $2,968,361,507
Ferry Discretionary Program	−19,972,603
State Safety Oversight Program	−14,841,808
Oversight Deduction	−22,262,711
Section 5340 Funds Added	300,253,404
Total Apportioned	3,211,537,790

[a] Includes 1.5 percent set-aside for Small Transit Intensive Cities Formula. Table 3 displays the amounts apportioned under the Urbanized Area Formula Program.

2. Basis for Allocation

FTA apportions Urbanized Area Formula Program funds based on statutory formulas. Congress established four separate formulas that are used to apportion portions of the available funding: The section 5307 Urbanized Area Formula Program formula, the Small Transit Intensive Cities (STIC) formula, the Growing States and High Density States formula, and a formula based on low-income population. Additional information on these formulas is provided in the following subsections.

Consistent with prior apportionment notices, Table 3 shows a total section 5307 apportionment for each UZA, which includes amounts apportioned under each of these formulas. Detailed information about the formulas is provided in Table 4. For technical assistance purposes, the UZAs that receive STIC funds are listed in Table 6. FTA will provide breakouts of the funding allocated to each UZA under these formulas upon request; such requests should be directed to your FTA Regional Office.

i. Section 5307—Urbanized Area Formula

For UZAs between 50,000 and 199,999 in population, the section 5307 formula is based on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, bus operating costs, fixed guideway vehicle revenue miles, and fixed guideway route miles, as well as population and population density. The Urbanized Area Formula is defined in 49 U.S.C. 5336.

To calculate a UZA's FY 2015 apportionment, FTA used population and population density statistics from the 2010 Census and validated mileage and transit service data from transit providers' 2013 National Transit Database (NTD) Report Year (when applicable). Consistent with section 5336(b), FTA has included in the urbanized area formula 22.27 percent of the fixed guideway directional route miles and vehicle revenue miles from eligible transit systems that were ordinarily attributable to rural areas.

FTA has calculated dollar unit values for the formula factors used in the Urbanized Area Formula Program apportionment calculations. These values represent the amount of money each unit of a factor is worth in this year's apportionment. The unit values change each year, based on all of the data used to calculate the apportionments, as well as the amount appropriated by Congress. The dollar unit values for FY 2015 are displayed in Table 5. To replicate the basic formula component of a UZA's apportionment, multiply the dollar unit value by the appropriate formula factor (*i.e.,* the population, population × population density), and when applicable, data from the NTD (*i.e.,* route miles, vehicle revenue miles, passenger miles, and operating cost).

ii. Small Transit Intensive Cities Formula

Under the STIC formula, FTA apportions funds to UZAs under 200,000 in population that have public transportation service that operates at a level equal to or above the industry average for all UZAs with a population of at least 200,000, but not more than 999,999. STIC funds are apportioned on the basis of six performance categories: Passenger miles traveled per vehicle revenue mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita, passenger miles traveled per capita, and passengers per capita. A UZA is granted a ''STIC share'' for each performance category in which its data exceeds the average of all UZAs between 200,000 and 1 million in population. The total dollar amount available for apportionment in the STIC formula is then divided evenly among each of the STIC shares.

The data used to determine a UZA's eligibility under the STIC formula and to calculate the STIC apportionments was obtained from the NTD reports for the 2013 reporting year. Because performance data change with each year's NTD reports, the UZAs eligible for STIC funds and the amount each receives may vary each year. UZAs that received funding through the STIC

formula for FY 2015 are listed in Table 6.

iii. Section 5340—Growing States and High Density States Formula

FTA also apportions funds to qualifying UZAs and States according to the section 5340 Growing States and High Density States formula. Half of the funds appropriated for section 5340 are apportioned to Growing States and half to High Density States. More information on this program and its formula is found in Section IV.S. of this notice.

iv. Low-Income Population

Beginning in FY 2013, the formula for this program has included a formula factor for low-income population. Of the amount authorized and appropriated for the Urbanized Area Formula Program in each year, 3.07 percent is apportioned on the basis of low income population.

3. Requirements

Program guidance for the Urbanized Area Formula Program is found in FTA Circular *9030.1E, Urbanized Area Formula Program: Program Guidance and Application Instructions,* dated January 16, 2014, and is supplemented by additional information and changes that may be provided in this notice, otherwise published in the **Federal Register**, or posted to the Section 5307 Web page.

4. Period of Availability

Section 5307 funds are available for a period of six years (year of apportionment plus five additional years). Accordingly, 5307 funds apportioned in FY 2015 must be obligated in grants by September 30, 2020. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2020 will revert to FTA for reapportionment under the Urbanized Area Formula Program. Grantees are encouraged to obligate funds when projects are ready and not wait until the last year the funds are available.

5. Other Program Information

i. Allocating Funds to Small Urbanized Areas and Designated Recipients

Consistent with the definition of ''designated recipient,'' FTA apportions funds according to the formula under section 5336 to designated recipients in UZAs of 200,000 or more in populations (large UZAs) and to the Governor of the State for UZAs of less than 200,000 in population (small UZAs). Pursuant to section 5336(e), the Governor of the State may allocate apportionments among the small UZAs. FTA interprets the legislation to allow a Governor to do so regardless of whether a small UZA has been designated as a TMA. FTA can make grants under this program to direct recipients after sub-allocation of funds.

ii. State Safety Oversight Funding

As mentioned above, under MAP–21 there is a 0.5 percent take-down from the Section 5307 Urbanized Area program that has been made available to states for State Safety Oversight (SSO) program activities as authorized under 49 U.S.C. 5329. More information about this program funding is in Section IV of this notice.

iii. Eligibility for Safety Certification Training

Recipients of sections 5307 funds may use up to 0.5 percent of those funds to cover up to 80 percent of the cost of participation by an employee who has direct safety oversight responsibility for the public transportation system. Likewise, participation by SSOA personnel with direct safety oversight responsibilities will be an eligible expense for section 5329(e)(6)(A) funds.

iv. National Transit Database Reporting

Section 5335 requires that each recipient or beneficiary under the Section 5307 program submit an annual report to the NTD containing information on financial, operating, and asset condition information. An annual NTD report should be a full report of all transit activities, regardless of funding source. For the 2014 Report Year, the reporting requirements apply to any recipient of a Section 5307 grant obligated in 2013, any recipient of a Section 5307 grant with outlays in 2014, or any entity that continued to benefit in 2014 from capital assets purchased using Section 5307 grants. Also, recipients or subrecipients that benefitted from Section 5307 grants in prior years, and which anticipate benefitting from Section 5307 grants in future years, should also continue to report to the NTD. Recipients or beneficiaries of Section 5307 grants that do not operate transit service, either directly or through a contract for purchased transportation services, are still required to report to the NTD on capital and planning expenditures, but have significantly reduced reporting requirements. Recipients or beneficiaries of Section 5307 grants that operate 30 or fewer vehicles in maximum service across all transit modes are also eligible for reduced, ''Small Systems'' reporting requirements. Recipients or beneficiaries making full annual reports to the NTD are also subject to monthly reporting requirements on service operations and safety incidents. MAP–21 also established new requirements for reporting asset inventories and condition assessments to FTA at section 5326(b)(3), 5335(a), and 5335(c). FTA previously proposed guidance for implementing these requirements in the **Federal Register**. FTA is currently reviewing and analyzing the comments received on this proposal, and will publish a future notice in the **Federal Register** with the final reporting requirements. The NTD Reporting Manuals contains detailed reporting instructions and are posted on the NTD Web site.

D. Passenger Ferry Grant Program (49 U.S.C. 5307(h))

The Passenger Ferry Grant Program (Ferry program) is an authorized discretionary program funded from the Section 5307 Urbanized Area Formula Grants program and offers public ferry systems in urbanized areas financial assistance for capital projects. For more information about the Ferry Program, contact *Vanessa Williams, Office of Program Management, at (202) 366–4818 or Vanessa.williams@dot.gov.*

1. Funding Available

The FY 2015 Appropriations provides a total of $19,972,603 in section 5307 Urbanized Area Formula grant funding to be set-aside for the Ferry program.

2. Basis for Allocation

Funds are allocated by a discretionary competition and published in a Notice of Funding Availability (NOFA) in the **Federal Register**. The NOFA will announce the available funding, program description, application procedures, specific eligibility, and criteria for project selection for the Ferry program. Announcement of project selections are posted to FTA's Web site and published in the **Federal Register**.

3. Program Requirements

Eligible recipients are designated recipients or eligible direct recipients of Section 5307 funds engaged in providing a public transportation passenger ferry service. Ferry systems that accommodate cars must also accommodate walk-on passengers. Funding may be used to support existing ferry service, establish new ferry service, repair and modernize ferry boats, terminals, and related facilities and equipment. Funds may not be used for operating expenses, planning, or preventive maintenance.

The Federal match for this program is 80 percent, 85 percent for net project

costs for acquiring vehicles (including clean-fuel or alternative fuel) in compliance with the Clean Air Act (CAA) or the Americans with Disabilities Act (ADA) of 1990; and 90 percent for net project costs for vehicle-related equipment or facilities (including clean-fuel or alternative-fuel vehicle-related equipment or facilities) in compliance CAA or ADA.

4. Period of Availability

Passenger Ferry funds follow the same period of availability as section 5307, and are available for a period of six years (year of apportionment plus five additional years). Accordingly, funds allocated in FY 2015 must be obligated in grants by September 30, 2020. Any of the funds allocated in FY 2015 that remain unobligated at the close of business on September 30, 2020 will revert to FTA for reallocation under the Ferry program. Grantees are encouraged to obligate funds when projects are ready and not wait until the last year the funds are available.

5. Other Program Information

The Ferry program grantees, the same as with all other FTA grantees, are required to comply with all applicable Federal statutes and regulations as a condition of their financial assistance. This includes all third party procurement guidance as described in FTA.C.4220.1F.

E. Fixed Guideway Capital Investment Grant (CIG) Program (49 U.S.C. 5309)—New and Small Starts and Core Capacity

The Fixed Guideway Capital Investment Grant (CIG) Program provides funds for construction of new corridor-based bus rapid transit and fixed guideway systems or extensions to existing systems and, as amended by MAP 21, projects that will expand the core capacity of an existing fixed guideway corridor. Eligible projects are new fixed-guideway systems, such as rapid rail (heavy rail), commuter rail, light rail, hybrid rail, trolleybus (using overhead catenary), cable car, passenger ferries, and bus rapid transit, or an extension of any of these. The Small Starts program also includes corridor-based bus rapid transit projects where the majority of the alignments do not operate on a separate fixed guideway but include features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional services for a substantial part of weekdays and weekend days. The addition of Core Capacity eligibility under the program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity today or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent. Projects become candidates for funding under this program by successfully completing steps in the process defined in section 5309 and obtaining a satisfactory rating under the statutorily-defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multi-year Federal commitment to the project. Small Starts projects receive construction funds through a single year grant or a Small Starts Grant Agreement (SSGA) that defines the scope of the project and specifies the Federal commitment to the project.

For more information about the New or Small Starts or Core Capacity project development process or evaluation and rating process contact *Elizabeth Day, Office of Planning and Environment, at (202) 366–4033 or Elizabeth.day@dot.gov,* or for information about published allocations contact *Eric Hu, Office of Transit Programs, at (202) 366–0870 or eric.hu@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $2,120,000,000 in new budget authority for the section 5309 program. Pursuant to FY 2015 appropriations, in addition to funds appropriated to carry out the CIG program, $27.98 million in FY 2011 and prior year unobligated or recovered section 5309 (Discretionary Bus and Bus Facilities) funds are available to carry out bus rapid transit (BRT) projects subject to the requirements of the CIG program. The total amount available for allocation is $2,098,800,000, after the one percent deduction for oversight, as shown in the table below.

CAPITAL INVESTMENT GRANT (CIG) PROGRAM—FY 2015

Total Appropriation	$2,120,000,000
Oversight Deductions	−21,200,000
Total Available ..	$2,098,800,000

2. Basis for Allocation

Funds are allocated on a discretionary basis and subject to program evaluation. Within the amounts appropriated by the 2015 Appropriations Act, the Act directed FTA to first fully fund those projects covered by a full funding grant agreement, then fully fund those projects whose section 5309 share is less than 40 percent, and then distribute the remaining funds so as to protect as much as possible the projects' budgets and schedules. It is not, however, a requirement for projects to have a New Starts share of less than 40 percent to be eligible for federal funding under the CIG program or to receive an allocation. Rather, as section 165 of the FY 2015 Appropriations Act states, the section 5309 Federal share for New Starts and Core Capacity projects may be up to *60 percent.*

3. Requirements

In January 2013, FTA published a final rule explaining the MAP–21 evaluation and rating process for New and Small Starts projects, which became effective in April 2013. Additionally, FTA published corresponding final policy guidance in August 2013 that provides additional details and explanations on that process. FTA will be completing additional rulemaking and guidance documents related to the remainder of the section 5309 MAP–21 provisions, including: Getting into and through the steps in the New Starts and Small Starts process; the evaluation and rating process for the Core Capacity Improvement program; getting into and through the steps in the Core Capacity process; warrants; expedited technical capacity reviews; and Programs of Inter-Related Projects. Project sponsors should reference the FTA Web site at *www.fta.dot.gov* for the most current fixed guideway capital investment grant program information. Grant-related guidance is found in FTA Circular 9300.1B, *Capital Investment Program Guidance and Application Instructions,* November 1, 2008; and C5200.1A, *Full Funding Grant Agreement Guidance,* December 5, 2002, which will be updated in the future to incorporate the changes made by MAP–21.

4. Period of Availability

MAP–21 expanded the period of availability for section 5309 capital investment funds to five years, (the fiscal year in which the amount is made

available plus four additional years). Therefore, funds for a project identified in FY 2015 must be obligated for the project by September 30, 2019. Section 5309 funds that remain unobligated to the projects for which they originally were designated after five fiscal years may be made available for other section 5309 projects. Grantees are encouraged to obligate funds when projects are ready and not wait until the last year the funds are available.

F. Enhanced Mobility of Seniors and Individuals With Disabilities Program (49 U.S.C. 5310)

The Enhanced Mobility of Seniors and Individuals with Disabilities Program provides formula funding to States and Designated Recipients of large UZAs (areas with populations of 200,000 or more) to improve mobility by expanding transportation options for seniors and individuals with disabilities. This program provides funds for: (1) Public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable, or inappropriate; (2) public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990; (3) public transportation projects that improve access to fixed route service and decrease reliance by people with disabilities on complementary paratransit; and (4) alternatives to public transportation that assist seniors and individuals with disabilities with transportation. A critical component of meeting these goals is the development and approval of projects by key community stakeholders, including seniors and individuals with disabilities, of a locally developed coordinated plan.

FTA apportions funds specifically for large UZAs, small UZAs (areas under 200,000 in population) and rural areas (areas under 50,000 in population) and requires new designations in large UZAs. Additionally, MAP–21 expanded the eligibility provisions to include operating expenses. Other provisions include the requirement that at least 55% of funds be used for traditional capital projects; up to 10% can be used for administrative expenses; and the remainder can be used for nontraditional projects. MAP–21 also reinforces the utility of interventions like mobility management which is eligible as a capital expense for both traditional and nontraditional projects.

On June 6, 2014, FTA published the final program circular, FTA C 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities: Program Guidance and Application Instructions,* which reflects changes made to the program pursuant to MAP–21 and detailed guidance on its provisions. The circular can be accessed at *www.fta.dot.gov/circulars.*

For more information about the Enhanced Mobility of Seniors and Individuals with Disabilities Program, contact *Mary Leary, Office of Transit Programs, at (202) 366–0224 or mary.leary@dot.gov.*

1. FY 2015 Funding Availability

FY 2015 Appropriations provides a total of $171,964,110 for the section 5310 program. The total amount apportioned to States and UZAs for the section 5310 program is $171,104,289, after the deduction for oversight (authorized by section 5338), as shown below in the table.

ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAM—FY 2015

Total Appropriation	$171,964,110
Oversight Deductions	−859,821
Total Apportioned	171,104,289

Table 8 displays the amounts apportioned under the Enhanced Mobility of Seniors and Individuals with Disabilities Program.

2. Basis for Allocation

Based on the statutory formula, sixty percent of the funds are apportioned among Designated Recipients for large UZAs; twenty percent of the funds are apportioned among the States for their small UZAs; and twenty percent of the funds are apportioned among the States for their rural areas.

3. Requirements

Recipients and subrecipients should refer to the program circular, FTA C 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities: Program Guidance and Application Instructions,* dated June 6, 2014, for a complete list of program requirements. Listed below are a few critical requirements and reminders about the program that can prevent award of funds to designated recipients.

i. Designated Recipients

For small UZAs and rural areas, the State is the Designated Recipient for section 5310. Current 5310 designations remain in effect until changed by the Governor of a State by officially notifying the appropriate FTA regional administrator of re-designation.

In large UZAs, the recipient charged with administering the section 5310 program must be officially designated through a process consistent with sections 5303 and 5304 prior to grant award. The MPO, State, or another public agency may be a preferred choice based on local circumstances. The designation of a recipient shall be made by the Governor in consultation with responsible local officials and publicly owned operators of public transportation, as required in sections 5303 and 5304. Section 5310 funds cannot be awarded until this designation is on file with the FTA Regional Office. A State agency may be the Designated Recipient for section 5310 funds for a large UZA; this arrangement still requires a designation letter to administer the program under MAP–21. However, if the State is selected as the Designated Recipient in a large UZA, the apportioned funds for the large UZA must be allocated to eligible subrecipients within the UZA.

Designated Recipients are responsible for administering the program. Responsibilities include: Notifying eligible local entities of funding availability; developing project selection processes; determining project eligibility; developing the program of projects; obligating and managing the program funds; program reporting; and ensuring that all subrecipients comply with Federal requirements.

Although FTA will only award grants to the States for the small urbanized and rural areas and Designated Recipients for the large urbanized areas under this program, there are other entities eligible to receive funding as a subrecipient. These include private nonprofit agencies, public bodies approved by the state to coordinate services for elderly persons and persons with disabilities, or public bodies which certify to the Governor that no nonprofit corporations or associations are readily available in an area to provide the service.

ii. Eligible Expenses

MAP–21 expanded eligibility of the funds, permitting them to be used for operating, in addition to capital, for transportation services that address the needs of seniors and individuals with disabilities. However, not less than 55 percent of the funds available for this program must be used for capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable. FTA refers to these projects as ''traditional 5310'' projects and based on the statutory language, these projects must be carried out by the traditional 5310 subrecipients, which are non-profits, or

a State or local governmental authority that is approved by a State to coordinate services for seniors and individuals with disabilities, or certifies that there are no non-profit organizations readily available in the area to provide the service. The 55 percent is a floor. Recipients may use more or all of their section 5310 funds for these types of projects. Remaining funds may be used for operating or capital projects such as: Public transportation projects that exceed the requirements of the ADA; public transportation projects that improve access to fixed-route service and decrease reliance by individuals with disabilities on complementary paratransit; or alternatives to public transportation that assist seniors and individuals with disabilities. Eligible subrecipients for these other eligible section 5310 activities include a State or local governmental authority, a private non-profit organization, or an operator of public transportation that receives a section 5310 grant indirectly through a recipient. The acquisition of public transportation services remains an eligible capital expense under this section.

States and Designated Recipients may use up to ten percent of their annual apportionment to administer, plan, and provide technical assistance for a funded project. No local share is required for these program administrative funds.

iii. Planning and Consultation

The States and Designated Recipients must certify that: Projects selected for funding under this program are included in a locally developed, coordinated public transit-human services transportation plan; and the plan was *developed and approved* through a process that included participation by seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public. Although the requirement for a coordinated plan is not new, FTA recognizes that some large UZAs may need to modify existing coordinated plans to address the specific needs of the program's target populations and/or be approved by individuals from the target populations. Modifications to existing plans are acceptable. FTA also encourages the integration of locally developed coordinated planning activities with other planning activities including those of the Department of Transportation and of other Federal agencies. MAP–21 requires that to the maximum extend feasible, the services funded under this section are coordinated with transportation services of other Federal departments and agencies.

Additional guidance for developing coordinated plans can be found in Chapter V of the FTA C 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities: Program Guidance and Application Instructions,* dated June 6, 2014.

iv. State and Project Management Plans

FTA requires States and Designated Recipients responsible for implementing the section 5310 program to document their approach to managing the program in a Program Management Plan (PMP) or State Management Plan (SMP). States and Designated Recipient are required to submit SMPs and PMPs to the Regional Office prior to grant award for review and approval. Approval of these plans must be on file before the award of a section 5310 grant in FY 2015. For assistance with developing these plans, recipients can use Chapter VII of the FTA C 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities: Program Guidance and Application Instructions,* dated June 6, 2014. This chapter includes guidance on how to create and use SMP and can be used as a guide to develop a PMP for the large UZAs. The primary purposes of management plans are to serve as the basis for FTA management reviews of the program, and to provide public information on the administration of the programs.

4. Period of Availability

For Enhanced Mobility of Seniors and Individuals with Disabilities Program funds apportioned under this notice, the period of availability is three years (year of apportionment plus two additional years). Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2017. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2017 will revert to FTA for reapportionment among the States and UZAs.

5. Other Program Information

FTA recently developed frequently asked questions (FAQs) that are posted to its Web site. These questions are meant to assist recipients and stakeholders with the continued implementation of the program. Please visit: *http://www.fta.dot.gov/about/15035.html* for the FAQs and other information about FTA's formula programs.

MAP–21 required FTA to report to Congress on candidate performance measures for the Section 5310 program. FTA initially sought comments on this topic during publication of the proposed program circular, and then sought additional comments through an Online Dialogue in 2014. This report will be provided to Congress and then made available in 2015. Grantees under the Section 5310 must still continue to report annually on the existing performance measures for this program, in accordance with FTA's responsibilities under the Government Performance and Results Act. The following are the current quantitative and qualitative performance measures: (1) Gaps in Service Filled. Provision of transportation options that would not otherwise be available for seniors and individuals with disabilities measured in numbers of seniors and people with disabilities afforded mobility they would not have without program support as a result of traditional Section 5310 projects implemented in the current reporting year. (2) Ridership. Actual or estimated number of rides (as measured by one-way trips) provided annually for individuals with disabilities and seniors on Section 5310-supported vehicles and services as a result of traditional Section 5310 projects implemented in the current reporting year. (3) Increases or enhancements related to geographic coverage, service quality, and/or service times that impact availability of transportation services for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year. (4) Additions or changes to physical infrastructure (*e.g.,* transportation facilities, sidewalks, etc.), technology, and vehicles that impact availability of transportation services for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year. (5) Actual or estimated number of rides (as measured by one-way trips) provided for seniors and individuals with disabilities as a result of other Section 5310 projects implemented in the current reporting year. The data for these five performance measures are due with the 4th quarter or annual report submitted by recipients no later than October 30 in FTA's electronic award management system.

G. Rural Area Formula Program (49 U.S.C. 5311)

The Rural Areas program provides formula funding to States and Indian tribes for the purpose of supporting public transportation in areas with a population of less than 50,000 (rural areas). Funding may be used for capital, operating, planning, job access and reverse commute projects, and State

administration expenses. Eligible sub-recipients include State and local governmental authorities, Indian Tribes, private non-profit organizations, and private operators of public transportation services, including intercity bus companies. Indian Tribes are also eligible direct recipients under section 5311, both for funds apportioned to the States and for projects apportioned or selected to be funded with funds set aside for a separate Tribal Transit Program. One significant modification to section 5311 was the inclusion of job access and reverse commute projects. Additionally, the program should coordinate public transportation services with rural transportation services by other Federal sources.

On October 24, 2014, FTA published final guidance for the program in FTA Circular 9040.1G, *Formula Grants for Rural Areas: Program Guidance and Application Instructions,* which reflected updates pursuant to MAP–21. The circular can be accessed at *www.fta.dot.gov/circulars.*

For more information about the Formula Grants for Rural Areas program, contact *Mary Leary, Office of Transit Programs, at (202) 366–0224 or mary.leary@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides $404,644,932 for the section 5311 program. The total amount apportioned to the States for the section 5311 program is $411,107,459, after the deductions for the Rural Transportation Assistance Program (RTAP), oversight (authorized by section 5338), the Tribal Transit Program, the Appalachian Development Public Transportation Assistance Program, and the addition of section 5340 for Growing States, as shown in the table below.

FORMULA GRANTS FOR RURAL AREAS PROGRAM—FY 2015

Total Appropriation	$404,644,932
Oversight Deductions	−2,023,225
RTAP Takedown	−8,092,899
Tribal Takedown	−19,972,603
Appalachian Takedown ..	−13,315,068
Section 5340 Funds	49,866,322
Total Apportioned	411,107,459

Table 9 displays the amounts apportioned to the States under the Formula Grants for Rural Areas Program.

2. Basis for Allocation

The section 5311 funds are apportioned pursuant to a statutory formula. The majority of rural formula funds (83.15 percent) are apportioned based on land area and population factors. In this first tier, no State may receive more than 5 percent of the amount apportioned on the basis of land area. The remaining rural formula funds (16.85 percent) are apportioned based on land area, vehicle revenue miles, and low-income individual factors. Vehicle revenue miles are a new service factor and the low-income individual factor reflects that job access and reverse commute projects are now eligible under the program. In this second tier, no State may receive more than 5 percent of the amount apportioned on the basis of land area, or more than 5 percent of the amounts apportioned for vehicle revenue miles. In addition to funds made available under section 5311, FTA adds amounts apportioned based on rural population according to the growing States formula factors of 49 U.S.C. 5340 to the amounts apportioned to the States under the section 5311 formula.

Data from the Rural Module of the National Transit Database (NTD) 2013 Report Year was used for this apportionment, including data from directly-reporting Indian tribes.

Other than the .5 percent takedown for oversight, the section 5311 program includes three takedowns: The Appalachian Development Public Transportation Assistance Program (ADTAP); the Rural Transit Assistance Program (RTAP); and the Tribal Transit Program. These separate programs are described in the sections that follow.

3. Requirements

The section 5311 program provides funding for capital, operating, planning, job access and reverse commute projects, and administration expenses for public transit service in rural areas. The planning activities undertaken with section 5311 funds are in addition to those awarded to the State under section 5305 and must be used specifically for rural areas' needs. States may elect to use 10 percent of their apportionment at 100 percent federal share to administer the section 5311 program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities, and research the State considers appropriate to promote effective delivery of public transportation to rural areas.

Each State prepares an annual program of projects, which must provide for fair and equitable distribution of funds within the States, including Indian reservations, and must provide for maximum feasible coordination with transportation services assisted by other Federal sources.

Additional program guidance for the Rural Areas Program is found in FTA Circular 9040.1G, *Formula Grants for Rural Areas: Program Guidance and Application Instructions,* dated October 24, 2014.

4. Period of Availability

For section 5311 program funds apportioned under this notice, the period of availability is three years (year of apportionment plus two additional years). Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2017. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2017 will revert to FTA for reapportionment under the Formula Grants to Rural Areas Program.

5. Other Program Information

i. National Transit Database (NTD) Reporting

Section 5335 requires that each recipient or beneficiary under the section 5311 program submit an annual report to the NTD containing information on capital investments, operations, and service. Section 5311(b)(4) specifies that the report shall include information on total annual revenue, sources of revenue, total annual operating costs, total annual capital costs, fleet size and type, and related facilities, revenue vehicle miles, and ridership. Annual NTD reports should be a complete report of all transit activities, regardless of funding source. State or Territorial DOT 5311 grant recipients must complete a one-page form of basic data for each 5311 sub-recipient, unless the sub-recipient is already providing a full report to the NTD, either as a Tribal Transit direct recipient, or as a subrecipient of another State, or as an UZA reporter (without receiving a full reporting waiver). For the 2014 Report Year, State or Territorial DOTs must report on behalf of any sub-recipient included in the program of projects for a grant that was open in 2014, that received outlays of section 5311 grant funds in 2014, or that continued to benefit in 2014 from capital assets purchased using section 5311 grants. State or Territorial DOTs should also continue to report on behalf of any sub-recipients that benefitted from section 5311 grants in prior years, and which anticipate benefitting from section 5311 grants in future years. For Tribal Transit direct recipients that have not previously reported to the NTD, your organization is required to report to the NTD if one of the following apply:

You obligated a grant in 2013, expended funds from a section 5311 grant in 2014; or you continued to benefit in 2014 from capital assets using section 5311 grants, unless the Tribe is already filing a full NTD Report as an UZA reporter or unless the Tribe has only received $50,000 or less in planning grants. MAP–21 also established new requirements for reporting asset inventories and condition assessments to FTA at sections 5326(b)(3), 5335(a), and 5335(c). FTA grantees and sub-recipients should look for a future **Federal Register** Notice with proposed changes to the FTA's NTD Reporting Manual for more information and an opportunity to comment on FTA's implementation of these new statutory requirements.

H. Rural Transportation Assistance Program (49 U.S.C. 5311(b)(2))

This program provides funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas. For more information about the Rural Transportation Assistance Program (RTAP) contact *Mary Leary, Office of Transit Programs, at (202) 366–0224 or mary.leary@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides $8,092,899 for the section 5311 RTAP Program. Of this amount, 15 percent, or $1,213,935 is available for the National RTAP program. The remainder is allocated to the States, as shown below.

RURAL TRANSPORTATION ASSISTANCE PROGRAM—FY 2015

Total Appropriation	$8,092,899
National RTAP	−1,213,935
Total Apportioned	6,878,964

Table 9 shows the FY 2015 RTAP allocations to the States.

2. Basis for Allocation

FTA allocates funds to the States by an administrative formula. First, FTA allocates $65,000 to each State ($10,000 to territories), and then allocates the balance based on rural population in the 2010 Census.

3. Requirements

States may use the funds to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in rural areas. These funds are to be used in conjunction with a State's administration of the Rural Areas Formula Program, but also may support the rural components of the section 5310 program.

4. Period of Availability

The section 5311 RTAP funds apportioned in this notice are available for obligation in FY 2015 plus two additional years, consistent with that established for the section 5311 program. Any funds that remain unobligated on September 30, 2017 will revert to FTA for apportionment under the program.

5. Other Program Information

The National RTAP project is administered by cooperative agreement and re-competed at five-year intervals. In July of 2014, FTA awarded a cooperative agreement to Neponset Valley Transportation Management Association to administer the National RTAP program. The National RTAP projects are guided by a project review board that consists of managers of rural transit systems and State DOT RTAP programs. National RTAP resources also support the biennial TRB National Conference on Rural Public and Intercity Bus Transportation and other research and technical assistance projects of a national scope to promote effective delivery of public transportation in rural areas.

I. Appalachian Development Public Transportation Assistance Program (49 U.S.C. 5311(c)(2))

MAP–21 established this program as a take-down under the section 5311 program to provide additional funding to support public transportation in the Appalachian region. There are sixteen eligible States that receive an allocation under this provision. The States and their allocation are shown in the Rural Areas Formula program table posted on FTA's Web site under the FY 2015 Apportionments page. For more information about the Appalachian Development Public Transportation Assistance Program (ADTAP), contact *Mary Leary, Office of Transit Programs, at (202)366–0224 or mary.leary@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides $13,315,068 for the ADTAP, as shown below.

APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM—FY 2015

Total Appropriation	$13,315,068
Total Apportioned	13,315,068

2. Basis for Allocation

FTA apportions the funds using percentages established under section 9.5(b) of the Appalachian Regional Commission Code (subtitle IV of title 40). According to this provision, allocations will be based in general on each State's remaining estimated need to complete eligible sections of the Appalachian Development Highway System as determined from the latest percentages of available cost estimates for completion of the System. Such cost estimates shall be produced at approximate five year intervals. Allocations shall contain upper and lower limits in amounts to be determined by the Commission and shall be made in accordance with legislation.

3. Requirements

Funds apportioned under this program can be used for purposes consistent with section 5311 to support public transportation in the Appalachian region. Funds can be applied for in the State's annual section 5311 grant.

MAP–21 includes a provision that permits the use of Appalachian program funds that cannot be used for operating to be used for a highway project under certain circumstances. States should contact their Regional Office if they intend to request a transfer. Additional information about the requirements for this funding can be found in Chapter VII of the FTA Circular 9040.1G, *Formula Grants for Rural Areas: Program Guidance and Application Instructions,* dated October 24, 2014.

4. Period of Availability

Section 5311 Appalachian program funds are available for three years (year of apportionment plus two additional years), consistent with that established for the section 5311 program. Funds that remain unobligated on September 30, 2017 will revert to FTA for reallocation.

J. Public Transportation on Indian Reservations Program (49 U.S.C. 5311)

The Public Transportation on Indian Reservations Program (Tribal Transit Program) is a takedown from the section 5311 apportionment, which allocates funds by both statutory formula consistent with 5311(j) and through a competitive discretionary program consistent with section 5311(c)(1)(A). The Tribal Transit formula funds are apportioned to Indian tribes for any purpose eligible under section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transit

services and rural intercity bus service. Eligible direct recipients are federally recognized Indian tribes in rural areas.

On December, 9, 2014, FTA published a Notice of Funding Availability (NOFA) soliciting proposals for the FY 2014 discretionary resources. FTA intends to use this solicitation and proposals received in response to this NOFA to allocate FY 2015 discretionary resources. Applications are due February 18, 2015. Specific eligibility for the discretionary resources is outlined in the NOFA.

For more information about the Tribal Transit Program contact *Élan Flippin, Office of Transit Programs at (202) 366–3800 or elan.flippin@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides $19,972,603 for the program, of which $14,972,603 is apportioned by formula and $5,000,000 will be allocated through a competitive discretionary program.

PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS PROGRAM—FY 2015

Total Appropriation	$19,972,603
Total Appropriated to Tribes by Formula	14,972,603
Total Available for Discretionary Allocation	5,000,000

2. Basis for Allocation

The majority of the funding is allocated by formula, as described below. The remainder of the appropriation plus prior year discretionary funds that have lapsed, will be made available through a discretionary competition.

i. Tribal Transit Formula Program

The Tribal Transit formula program is distributed to eligible Indian tribes providing public transportation on tribal lands. The formula apportionment shown in Table 10 is based on a statutory formula which includes three tiers. Tiers 1 and 2 are based on data reported to NTD by Indian tribes; Tier 3 is based on 2008–2012 American Community Survey data.

The three tiers for the formula are:

Tier 1—50 percent based on vehicle revenue miles reported to the NTD

Tier 2—25 percent provided in equal shares to Indian tribes reporting at least 200,000 vehicle revenue miles to the NTD

Tier 3—25 percent based on Indian tribes providing public transportation on reservations where more than 1,000 low income individuals reside

Tribes should continue to report vehicle revenue miles to the NTD for inclusion in future TTP formula apportionments.

ii. Tribal Transit Discretionary Program

The Tribal Transit Discretionary program funds are allocated annually based on a discretionary competition and as published in a NOFA in the **Federal Register**. Funds are allocated for grants to Indian tribes for purposes eligible under section 5311; however, FTA may limit the discretionary program based on funding priorities. FTA published a NOFA in the **Federal Register** soliciting projects for the available FY 2014 discretionary funds on December 9, 2014. FTA intends to use this solicitation to allocate FY 2015 discretionary funds, as available. The NOFA contains information about the available funding, application procedures, specific eligibility, and criteria for project selection for the discretionary program.

3. Requirements

Formula funds apportioned under this program can be used for purposes consistent with section 5311 to support public transportation on Indian Reservations in rural areas. Funds allocated under the discretionary program must be used consistent with the tribe's proposal and the allocation notice published in the **Federal Register**, which is used to announce the selected projects. Eligible recipients under both the discretionary and formula program include Federally-recognized Indian tribes or Alaska native villages, groups, or communities as identified by the U.S. Department of the Interior Bureau of Indian Affairs (BIA). A tribe must have the legal, financial and technical capabilities to receive and administer Federal funds.

Section 5335 requires NTD reporting for all direct recipients of section 5311 funds. This reporting requirement has and continues to apply to the Tribal Transit Program. Tribes that provide public transportation in rural areas are reminded to report annually so they are included in the Tribal Transit formula apportionments. Tribes needing assistance with reporting to the NTD should contact the NTD Helpline at 1–888–252–0936 or *NTDHelp@dot.gov.*

4. Period of Availability

Tribal Transit program funds are available for three years (year of apportionment or allocation plus two additional years), consistent with that established for the section 5311 program. Any FY 2015 formula funds that remain unobligated at the close of business on September 30, 2017 will revert to FTA for reapportionment under the Tribal Transit Program.

5. Other Program Information

The funds set aside for the Tribal Transit Program are not meant to replace or reduce funds that Indian tribes receive from States through the section 5311 program but are to be used to enhance public transportation on Indian reservations and transit serving tribal communities. Funds allocated to Indian tribes by the States may be included in the State's section 5311 application or awarded by FTA in a grant directly to the Indian tribe. FTA encourages Indian tribes intending to apply to FTA as direct recipients to contact the appropriate FTA Regional Office at the earliest opportunity.

Tribal Transit Program grantees, the same as with all other FTA grantees, are obliged to comply with applicable Federal requirements as a condition of their financial assistance. To assist tribes with understanding these requirements and the recent program changes, FTA conducted five Tribal Transit Technical Assistance Workshops in FY 2013 and FY 2014. FTA will continue similar offerings in FY 2015; workshops are tentatively planned for Santa Fe, Sacramento, and Denver. In addition, FTA will begin reviews to assess technical assistance needs and provide specific technical assistance for tribes beginning in March 2015; these reviews will include an assessment of capabilities related to compliance areas pursuant to the Master Agreement, a site visit and technical assistance from FTA and its contractors. FTA will post information about upcoming workshops to its Web site and will disseminate information about the reviews through the Regional Offices. FTA has regional tribal transit liaisons in each of the FTA Regional Offices that are available to assist tribes with applying for and managing FTA grants. A list of regional tribal transit liaisons can be found on FTA's Web site at *http://www.fta.dot.gov/13094_15845.html.* Tribes are encouraged to work directly with their regional tribal transit liaison.

Technical assistance for Indian tribes may also be available from the State DOT using the State's allocation of RTAP or funds available for State administration under section 5311, from the Tribal Transportation Assistance Program (TTAP) Centers supported by FHWA, and from the Community Transportation Association of America under a program funded by the United States Department of Agriculture (USDA). National RTAP will also be developing new resources for Tribal

Transit. For more information about National RTAP, contact *Élan Flippin, Program Manager at 202–366–3800 or visit the National RTAP Web site http://www.nationalrtap.org.*

K. Research, Development, Demonstration, and Deployment Projects (49 U.S.C. 5312)

MAP–21 amended the section 5312: Research; Innovation and Development; and, Demonstration, Deployment and Evaluation to include a Low or No Emission Vehicle Deployment program to fund low or no emission vehicles, facilities, or related equipment in non-attainment or maintenance areas. Additionally, MAP–21 established a structured process for applications, evaluations, and reporting for the research programs. For more information contact *Vincent Valdes, Office of Research, Demonstration and Innovation, at (202) 366–3052 or Vincent.valdes@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $30,000,000 for section 5312. Of this amount, $22,500,000 is allocated for the Low or No Emissions Vehicle Deployment Program.

2. Basis for Allocation

Topical areas are based on the Department's Strategic Goals and projects are generally selected through Notices of Funding Availability (NOFAs).

3. Requirements

Application Instructions and Program Management Guidelines are set forth in FTA Circular 6100.1D, *Research, Technical Assistance and Training Programs: Application Instructions and Program Management Guidelines.* FTA is in the process of updating this circular to incorporate changes resulting from MAP–21 and expects to publish a final circular in early 2015. All research recipients are required to work with FTA to develop approved Statements of Work. Under MAP–21, all research projects now require at least a 20 percent non-Federal share. In some cases, FTA may require a higher non-Federal share if FTA determines a recipient would obtain a clear and direct financial benefit from the project, or if non-Federal share is an evaluation factor under a competitive selection process. Projects under the Low or No Emission Vehicle Deployment Program are also subject to section 5307 requirements.

4. Period of Availability

Except for the Low or No Emission Vehicle Deployment Program, FTA establishes the period in which the funds must be obligated to the project. If the funds are not obligated within that period of time, they revert to FTA for reallocation under the program. Low or No Emission Vehicle Deployment funds are available for two years in addition to the year the funds are made available to a recipient, for a total of three years.

5. Other Program Information

Requests for research proposals will be published in Grants.gov. Awards for Low and No Emission Vehicle Deployment competition with previous fiscal year funds will be announced on February 5, 2015.

L. Transit Cooperative Research Program (49 U.S.C. 5313)

The Transit Cooperative Research Program (TCRP) funds a variety of applied research efforts for practitioners in the transit industry. TCRP is the cooperative effort of three organizations: The FTA; the National Academies, acting through the Transportation Research Board (TRB); and the Transit Development Corporation, Inc. (TDC), a nonprofit educational and research organization established by the American Public Transportation Association (APTA).

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $3,000,000 for this section.

2. Basis for Allocation

TCRP issues annual calls for problem statements. For more information and past reports see *www.tcrponline.org.*

3. Requirements

Funds are allocated directly to the Transportation Research Board at the National Academies of Sciences. For application requirements for this program, please see *www.tcrponline.org.*

4. Period of Availability

The Transportation Research Board establishes the period in which funds must be obligated to a project.

M. Technical Assistance and Standards Development (49 U.S.C. 5314)

This section allows FTA to provide technical assistance to recipients to more effectively and efficiently provide transit service and to improve administration of Federal transit funds. It also authorizes the development of voluntary and consensus-based standards and best practices. Additionally, through a competitive process, FTA may enter into agreements with national nonprofit organizations to assist providers of public transportation to: Comply with the Americans with Disabilities Act (ADA); comply with human services transportation coordination requirements and enhance Federal coordination; to meet the transportation needs of elderly individuals; to increase transit ridership in coordination with MPOs and other entities through development around public transportation stations; to address transportation equity needs; and to provide any other technical assistance activities deemed necessary by FTA. For more information contact *Vincent Valdes, Office of Research, Demonstration and Innovation, at 202–366–3052 or vincent.valdes@dot.gov or Jamie Pfister, Office of Program Management, at 202–366–2053 or Jamie.pfister@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $4,000,000 for this section.

2. Basis for Allocation

FTA will allocate funds based on identified technical assistance and standards needs for the transit industry and generally selected through a competitive process.

3. Requirements

Application Instructions and Program Management Guidelines are set forth in FTA Circular 6100.1D, *Research, Technical Assistance, and Training Programs: Application Instructions and Program Management Guidelines,* dated May 1, 2011. FTA is in the process of updating this circular to incorporate changes resulting from language in MAP–21 and expects to publish the final circular in early 2015. All recipients of Technical Assistance and Standards funds are required to work with FTA to develop approved Statements of Work. Projects funded using grants require at least a 20 percent non-Federal share.

4. Period of Availability

FTA establishes the period in which funds must be obligated to a project. If the funds are not obligated within that period of time, they revert back to FTA for reallocation under the program.

5. Other Program Information

Requests for proposals will be published in Grants.gov.

N. Human Resources and Training Programs (49 U.S.C. 5322)

FTA may make grants or enter into contracts for human resource needs

including: Employment training programs; outreach programs to increase minority and female employment; research on public transportation personnel and training need; and, training and assistance for minority business opportunities. Additionally, the Innovative Public Transportation Workforce Development program is a competitive grant program to assist in the development of innovative workforce activities.

A national transit institute is authorized under section 5322(d). The institute is authorized to develop training and education programs related to topics in public transportation. For more information contact *Vincent Valdes, Office of Research, Demonstration and Innovation, at (202) 366–3052 or vincent.valdes@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides $500,000 for this section to carry out human resource activities under section 5322(a), (b) and (e). There is $3,328,767 is available for a national transit institute authorized under section 5322(d).

2. Basis for Allocation

On September 5, 2014, FTA published a Notice of Funding Availability (NOFA) soliciting proposals for Ladders of Opportunity: Public Transportation Workforce Development Projects. FTA intends to use that solicitation and proposals received in response to that NOFA to allocate FY 2015 discretionary resources. Applications were due November 17, 2014. Specific eligibility for the discretionary resources was outlined in the NOFA. FTA will allocate funds based on identified workforce development and training needs, as well as by an innovative workforce development competition or through a standard award process.

3. Requirements

Application Instructions and Program Management Guidelines are set forth in FTA Circular 6100.1D, *Research, Technical Assistance, and Training Programs: Application Instructions and Program Management Guidelines,* dated May 1, 2011. FTA is in the process of updating this circular to incorporate changes resulting from language in MAP–21. All recipients of Human Resources and Training funds are required to work with FTA to develop approved Statements of Work. FTA may award funds through contracts or grants. Grants funded under the Human Resources and Training and the Innovative Public Transportation Workforce Development Program require a 50 percent non-Federal share.

4. Period of Availability

FTA establishes the period in which funds must be obligated to a project. If the funds are not obligated within that period of time, they revert back to FTA for reallocation under the program.

5. Other Program Information

Requests for proposals will be published in Grants.gov.

O. Public Transportation Emergency Relief Program (49 U.S.C. 5324)

FTA's Emergency Relief (ER) Program is authorized to provide funding for public transportation expenses incurred as a result of an emergency or major disaster. No funding was provided in the FY 2015 Appropriations Act for this program. Eligible expenses include emergency operating expenses, such as evacuations, rescue operations, and expenses incurred to protect assets in advance of a disaster, as well as capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of an emergency. While Congress did not provide funding for this program in FY 2015, in the event of a declared emergency or major disaster recipients may use funds apportioned under sections 5307 and 5311 for emergency purposes. However, recipients are advised that formula funds used for emergency purposes will not be replaced or restored in the event that funding is subsequently made available through FTA under the ER Program or by FEMA.

In response to Hurricane Sandy, the Disaster Relief Appropriations Act of 2013 made $10.9 billion available (which was subsequently reduced to $10.2 billion by sequestration and intergovernmental transfers of funds to other bureaus and offices within DOT) for the Emergency Relief program for public transportation systems only in the affected areas. These funds cannot be used for other disasters. FTA has announced and allocated funding for affected transit agencies within the declared disaster area through a series of **Federal Register** notices beginning in 2013 and continuing through 2014.

In order for an agency to be eligible for Emergency Relief funding, the agency must have been affected by an emergency as defined under section 5324. Section 5324(a)(2) defines an emergency as ''a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm) or a catastrophic failure from any external cause as a result of which (a) the Governor of a State has declared an emergency and the Secretary has concurred or (b) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.'' Expenses incurred due to incidents that do not rise to the level of a Governor's declaration with concurrence by the Secretary of Transportation will not be eligible to be funded under section 5324. Further, in the event of a Presidential declaration of emergency, FTA may reimburse only those expenses that are not reimbursed under the Stafford Act. If funding is available under the Emergency Relief program for a public transportation system affected by an emergency, agencies are directed to seek emergency relief from FTA rather than FEMA.

If a recipient has been affected by an emergency or major disaster, the recipient should contact the appropriate FTA Regional Office as soon as practicable to determine whether Emergency Relief funds are available, and to notify it that it plans to seek reimbursement for emergency operations and/or repairs that have already taken place or are in process. If Emergency Relief funds are unavailable the recipient may seek reimbursement from FEMA. Properly documented costs for which the grantee has not received reimbursement from FEMA may later be reimbursed by grants made either from section 5324 funding (if appropriated) or section 5307 and 5311 program funding, once the eligible recipient formally applies to FTA for reimbursement and FTA determines that the expenses are eligible for emergency relief.

On October 7, 2014, FTA published final program regulations for the Emergency Relief Program at 49 CFR part 602. This final rule replaces the interim final rule published on March 29, 2013. This final rule establishes and clarifies the procedures and eligibility requirements for entities seeking or receiving funding under this program. FTA solicited and responded to public comments in the development of these regulations.

FTA anticipates publishing for notice and comment a program guidance manual for the ER Program in early 2015. This guidance manual will contain additional information on the procedures, eligibility requirements, and recommended practices for entities that have been or may be affected by an emergency or disaster, including those

seeking or receiving funding under this program. FTA will solicit and respond to public comments on this manual. The publication of this guidance manual will be announced in a subsequent notice.

Additional information about the Emergency Relief program and FTA's response to Hurricane Sandy is available on the FTA Web site at *www.fta.dot.gov/emergencyrelief.*

For more information on the ER Program or FTA's response to Hurricane Sandy, contact Adam Schildge, Office of Program Management, at 202–366–0778 or *adam.schildge@dot.gov.* For questions regarding the Final Rule, contact *Bonnie Graves, Office of Chief Counsel, at 202–366–4011 or bonnie.graves@dot.gov.*

P. State Safety Oversight Grant Program (49 U.S.C. 5329(e)(6))

MAP–21 establishes a Public Transportation Safety Program (section 5329) authorizing FTA to establish and enforce a new comprehensive framework to oversee the safety of public transportation throughout the United States. Section 5329(e)(6) of 49 U.S.C. provides funding to support States with rail fixed guideway public transportation systems (rail transit systems) to develop and carry out State Safety Oversight (SSO) Programs consistent with the requirements of MAP–21. For more information about the State Safety Oversight Formula Grant Program, *contact Maria Wright, Office of Safety Review, at (202)366–5922 or Maria1.Wright@dot.gov.*

1. Funding Available

Under MAP–21, there is a 0.5 percent take-down from the section 5307 Urbanized Area Formula grant program that provides the funding to be apportioned to States for SSO program activities. For the partial FY 2015 year apportionment, the amount available for the SSO program is $14,841,808.

2. Basis for Allocation

FTA apportions SSO grant program funds to eligible States using a three-tier formula based on statutory requirements:

(a) Tier 1, the Service Tier, apportions sixty percent (60%) of available funds based on the vehicle passenger miles (PMT), vehicle revenue miles (VRM), and directional route miles (DRM) reported by the rail fixed guideway public transportation systems in each State. The Service Tier also includes a cap so that no State can receive more than 15% of the funding available for each of the above service measures (*i.e.* PMT, VRM, DRM).

(b) Tier 2, the Base Tier, apportions twenty percent (20%) of available funds equally to each eligible State, to ensure a minimum funding level for each State, regardless of the level of service provided by the rail transit agencies overseen in the program.

(c) FTA apportions the remaining twenty percent (20%) through Tier 3, the Modal Tier, which takes into account the number of separate rail transit systems (*e.g.,* light rail, heavy rail, etc.) not regulated by the FRA in each State's jurisdiction. The Modal Tier also includes rail transit agencies in engineering or construction that are overseen by the State.

3. Program Requirements

i. Eligible Recipients

Eligible recipients include any eligible State or entity designated by the eligible State(s) with the legal capacity to perform all of the following responsibilities: (a) Receive and dispense Federal funds for the purposes of the State Safety Oversight Program (SSOP); (b) submit grant applications to FTA; and (c) enter into formal grant agreements with FTA.

ii. Eligible Activities

FTA requires each applicant to demonstrate in its grant application that its proposed grant activities will develop, lead to, or carry out an enhanced SSOP that meets the requirements under 49 U.S.C. 5329(e). Grant funds may be used for program operational and administrative expenses, including employee training activities.

Grant funds under this program used for activities related to oversight of rail transit systems within an SSOA's jurisdiction must meet the definition of a rail fixed guideway public transportation system, including those rail transit systems in operation, in the engineering or construction phase of development, and those in a planning or other earlier phase occurring prior to the engineering or construction phase as long as that rail transit system meets all applicable Federal requirements. FTA maintains a list of these systems based on documentation provided by States in annual reports and other submittals to FTA. Eligible States should contact FTA as soon as they become aware of a new rail transit system in planning, engineering, construction, or operations in their jurisdictions.

Eligible States must detail how they will use SSO Formula Grant Funds in certification work plans and SSO grant applications. SSO formula grant funds may only be used to support activities that meet existing 49 CFR part 659 requirements if those activities also meet 49 U.S.C. 5329(e). FTA has provided FAQs to further clarify eligible activities: *http://www.fta.dot.gov/tso.html.*

FTA is in the process of implementing the National Public Transportation Safety Program under 49 U.S.C. 5329, and a rulemaking on the SSO Program, among other things, is expected under 49 U.S.C. 5329(e). If FTA subsequently establishes criteria or conditions for grants made under the SSO Formula Grant Program that are different from those in this notice, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this notice, unless the change benefits the applicant.

iii. SSOP Certification

As stated in the FTA's March 14, 2014 **Federal Register** notice on the SSO Formula Grant Program, the SSO grant award and certification processes are considered separate and distinct from each other. FTA announced the initial certification status of each eligible State on October 1, 2013. To determine this status, FTA evaluated each eligible State's submitted SSO program against the statutory mandates set forth in 49 U.S.C. 5329(e). As required in 49 U.S.C. 5329(e)(7), FTA provided each State with the results of this evaluation in writing by October 1, 2013. FTA also conducted teleconference calls with the eligible States to review these results.

States that were certified may be awarded grants to cover the costs associated with implementing or carrying out their SSO programs. States that were not certified, but received FTA approval to submit grant applications, may be awarded grants to support initial development and implementation of enhanced SSOPs.

To confirm States use their grant funds to enhance their SSOPs in ways that address MAP–21 requirements, FTA intends for States to use FTA's October 1, 2013 certification correspondence and the supporting teleconference calls to develop work plans to supplement their applications to FTA's new SSO Formula Grant Program.

States that are not certified are required to provide these work plans as part of the grant application process. An eligible State's work plan must be submitted and approved prior to submission of the State's grant application. States that are certified are encouraged, but not required, to submit work plans that will further enhance their SSOPs.

These work plans should demonstrate a clear and workable transition to meet MAP–21 statutory requirements. They should identify gaps or deficiencies in their respective State's authorizing safety legislation relative to MAP–21 statutory requirements, articulate a clear end result to achieve compliance, and identify eligible activities with reasonable timeframes to accomplish these goals. FTA will provide States with a work plan template, as well as supporting materials for addressing some of the more common gaps in meeting MAP–21 provisions. These materials are available on the FTA Web site at: *http://www.fta.dot.gov/tso.html.*

States are not required to use these materials and may use a format of their choice when developing their work plan.

FTA will work with grantees to identify meaningful milestones to apply grant funding. FTA will review each plan to assess compliance with MAP–21 statutory requirements and the reasonableness of the activities and timeframes proposed. FTA must accept each State's work plan before the State may submit its grant application and the funds can be awarded. FTA will work closely with each eligible State to determine conformance with these eligibility criteria and to develop these transition or remedial work plans to address any non-compliance with these criteria.

FTA will conduct quarterly teleconference calls and quarterly and annual reporting to monitor the progress of eligible States in meeting MAP–21 statutory requirements.

iv. Ineligible Activities

The SSO Formula Grant Program specified in 49 U.S.C. 5329(e)(6) is intended to support administrative and operating costs for State safety oversight of rail transit systems. Therefore, the following costs are ineligible:

(a) Project costs that cover rail transit system expenses;

(b) Project costs for State activities unrelated to the SSOP;

(c) Project costs that directly support the operation or maintenance of a rail transit system;

(d) Project costs for which the recipient has received funding from another Federal agency; and

(e) Other project costs that FTA determines are not appropriate for the SSOP.

To find standards for determining eligible and ineligible expenses, see 2 CFR part 200.

v. Grant Application Procedures

To receive the funds apportioned through this formula, each eligible State must be or become an FTA grantee. Eligible States should follow these steps to begin the grant application process:

(a) Identify FTA grant recipient: Each Governor will need to identify the State agency that will be the FTA grant recipient for these program funds by sending a letter to the appropriate FTA Regional Administrator. A listing of FTA Regional Offices and full contact information is available at *http://www.fta.dot.gov/.*

(b) Coordinate with the FTA Regional Office: The identified grant recipient should work with the FTA Regional Office to determine what additional activities or information are required with respect to the new SSO Formula Grant Program. If the identified grant recipient is not an existing FTA grant recipient, it must work with the appropriate FTA Regional Office to be established as a new FTA recipient. The FTA Regional Office will identify the specific activities necessary to become established as a FTA recipient.

(c) Identify sufficient and allowable matching funds: Eligible States are required to provide a twenty percent (20%) match for FTA-funded SSOP activities.

vi. Grant Requirements

Section 5329(e)(6)(B)(ii) requires that grant funds apportioned to eligible States must be subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations, for grants awarded prior to December 26, 2014 and 2 CFR part 200 and 2 CFR part 1201 for grants awarded on or after December 26, 2014 and as well as amendments to grants after that date. Among these requirements, the following terms and conditions apply:

(a) Work Plan Submission Requirements. States that have not yet been certified as part of FTA's October 1, 2013 initial certification determination must submit a work plan. The work plan must identify and address gaps and deficiencies in the State's SSOP to meet 49 U.S.C. 5329(e) requirements.

(b) 49 CFR part 659. Until three years after a final rule issued by FTA, 49 U.S.C. 5330 and its implementing regulations at 49 CFR part 659 will stay effective. In order to receive FTA funding for its SSOP, recipients in compliance with 49 CFR part 659 as of October 1, 2013, must, at a minimum, maintain compliance until these provisions are repealed. However, as stated above, SSO Formula Grant Program funds may not be used to support activities that meet 49 CFR part 659 requirements unless those activities also meet 49 U.S.C. 5329(e) requirements.

(c) Local Share. FTA's formula provides a Federal share covering up to eighty percent (80%) of the eligible project costs of an SSOP grant developed or carried out under MAP–21. Eligible States must provide at least a twenty percent (20%) local share. The twenty percent (20%) local share may not include other Federal funds, any funds received by the State from a rail transit agency, or any revenues earned by a rail transit agency. Section 5329(e)(4)(A)(i) requires each SSOA to be financially and legally independent from any public transportation entity it oversees. States that currently rely entirely upon fees, assessments, or funding from rail transit systems in their jurisdiction to fund SSO activities are unable to use those funds for any SSO Formula Grant Program activities and will need to address this issue of financial and legal independence as part of their work plan. FTA will work with these States on an individual basis, to the extent necessary, to identify permissible local share sources. States overseeing multi-state operations may include funds collected from partner States as part of their local share as long as those funds are not otherwise prohibited under this Grant Program. As part of the grant application, States need to include the source of the local match. In addition, for those States overseeing multi-state operations must show evidence of agreement regarding how the local share will be met among the States.

4. Period of Availability

SSO Formula Grant Program funds are available for three years (year of apportionment plus two additional years). Any FY 2015 funds that remain unobligated at the close of business on September 30, 2017 will revert to FTA for reapportionment under the SSO Formula Grant Program.

5. Other Program Requirements

i. Pre-Award Authority

Grantees may be reimbursed for eligible activities incurred as of the date of publication of this notice, provided the grantee has been certified or upon approval of a certification work plan. A grant marked for pre-award authority cannot be executed unless the Initial Federal Financial Report (FFR) has been completed in TEAM-Web. Please see the

most current version of FTA Circular 5010, ''Grants Management Guidelines'' found on FTA's Circular Web page. (*http://www.fta.dot.gov/circulars*) or contact your Regional Office for more information.

ii. Procurement and Contracting Guidelines

FTA procurement and contracting requirements apply to projects funded by the SSO Formula Grant Program. For additional information, please see the latest version of FTA Circular 4220.1, ''Third Party Contracting Guidance.'' (*http://www.fta.dot.gov/circulars*)

iii. Grant Management

FTA Circular 5010, ''Grants Management Guidelines'' (*http://www.fta.dot.gov/circulars*) provides FTA's grant management requirements. All recipients need to affirm the current version of FTA's Master Agreement, which contains the terms and conditions applicable to awards of Federal financial assistance. The Master Agreement will be incorporated by reference and made part of the underlying Grant Agreement when executed. The latest Master Agreement can be found on FTA's Web site (*http://www.fta.dot.gov/grants/15072.html*).

iv. Annual Certifications and Assurances

Each Applicant for (and later Recipient of) SSO grant funds must sign and submit the required Certifications and Assurances and submit updated Certifications and Assurances annually thereafter. Submissions may be made electronically through TEAM-Web (or its successor, TrAMS). The latest Certifications and Assurances can be found on FTA's Web site at *http://www.fta.dot.gov/grants/13071.html.*

v. Planning Requirements

Projects funded by the SSO Formula Grant Program may, but are not required to, be included in the Statewide Transportation Improvement Program (STIP) or a Metropolitan Transportation Improvement Plan (TIP). Inclusion of such projects in the STIP or TIP is not a prerequisite in order to be reimbursed by FTA.

vi. Cost Principles (2 CFR Part 200 Subpart E)

Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses. Grantees should exercise care when incurring costs to confirm all expenditures meet the criteria of eligible costs. Failure to comply with these requirements may result in expenditures for which use of project funds cannot be authorized. For further information on allowable costs and FTA financial grant management expectations, please refer to the most current version of FTA Circular 5010, ''Grants Management Guidelines'' Chapter VI, ''Financial Management.'' The document can be found at the following web address: *http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf.*

Q. State of Good Repair Program (49 U.S.C. 5337)

The State of Good Repair (SGR) Grant program provides capital assistance for maintenance, rehabilitation, and replacement projects of existing fixed guideway and high intensity motorbus systems to maintain a state of good repair. FTA estimates that a backlog of $86 billion of transit assets need to be replaced or repaired and that number continues to grow. Additionally, SGR grants are eligible for developing and implementing Transit Asset Management plans. This program provides funding for the following transit modes: Rapid rail (heavy rail), commuter rail, light rail, hybrid rail, monorail, automated guideway, trolleybus (using overhead catenary), aerial tramway, cable car, inclined plane (funicular), passenger ferries, bus rapid transit, and fixed-route bus services operating on high-occupancy-vehicle (HOV) facilities.

MAP–21 replaces and modifies elements of the fixed guideway modernization program (section 5309) with this program. Projects, including new maintenance facilities or maintenance equipment, that solely expand capacity or service are not eligible projects. However, FTA will permit expansion of capacity within replacement projects to meet current or projected short-term service needs (*e.g.,* replacing a maintenance facility with a larger facility, or replacing a bus with a larger bus). The SGR program is intended to fund projects to maintain, replace or rehabilitate transit assets of existing fixed guideway and high intensity motorbus systems.

FTA published the State of Good Repair program guidance, FTA Circular 5300.1, *State of Good Repair Grants Program: Guidance and Application Instructions,* dated January 28, 2015. The circular can be accessed at *www.fta.dot.gov/circulars.*

For more information about the SGR program, contact *Eric Hu, Office of Transit Programs, at (202) 366–0870 or eric.hu@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $1,441,955,342 for the SGR program. After a 0.75 percent oversight takedown from the amount apportioned to the fixed guideway tier, the total amount allocated for the SGR program is $1,431,448,895, as shown in the table below.

STATE OF GOOD REPAIR FORMULA GRANT PROGRAM—FY 2015

Total Appropriation	[a]$1,441,955,342
Oversight Deductions	−10,506,447
Total Apportioned	1,431,448,895

[a] Total Appropriation includes $1,400,859,615 for the High Intensity Fixed Guideway tier and $41,095,727 for the High Intensity Motorbus tier.

Table 11 shows the FY 2015 SGR Program formula apportionments to eligible UZAs.

2. Basis for Allocation

FTA allocates SGR program funds according to a statutory formula. Funds are apportioned to UZAs with fixed guideway and high intensity motorbus systems that have been in operation for at least seven years. This means that only segments of fixed guideway and high intensity motorbus systems that entered into revenue service on or before September 30, 2007 are included in the formula, as identified in the NTD.

The law requires that 97.15 percent of the total amount authorized for the SGR program be apportioned to UZAs with ''high intensity fixed guideway'' systems. The apportionments to UZAs with ''high intensity fixed guideway'' systems are determined by two equal elements: (1) The proportion a recipient would have received of the fiscal year 2011 apportionment for 49 U.S.C. 5337, as it then existed, if calculated using the current version of 49 U.S.C. 5336(b)(1) and the current definition of ''fixed guideway'' at 49 U.S.C. 5337(a); (2) the proportion of vehicle revenue miles of an UZA to the total vehicle revenue miles of all UZAs and the proportion of directional route miles of an UZA to the total directional route miles of all UZAs. High Intensity Motorbus systems will receive the remaining 2.85 percent of the total amount authorized for the SGR program, and the apportionments to UZAs are based on vehicle revenue miles and directional route miles. Apportionment changes resulting from the exclusion of vehicle revenue and directional miles reported from bus service provided other than on High Occupancy Vehicle (HOV) lanes will take effect in FY 2016.

Vehicle revenue miles and directional route miles that are attributable to an UZA must be placed in revenue service at least 7 years before the first day of the fiscal year. FTA will apportion section 5337 funds to the section 5307 Designated Recipient for the UZA with fixed guideway transportation systems operating at least 7 years. The Designated Recipients will then allocate funds as appropriate to recipients that are public entities in the UZA and provide split letters to the FTA. FTA can make grants to direct recipients after sub-allocation of funds.

3. Requirements

In addition to the program guidance found in the circular, all recipients will need to certify that they will comply with the forthcoming rule issued under section 5326 for the Transit Asset Management plan, and SGR projects will need to be included in recipients' Transit Asset Management plans. This requirement is subject to FTA rulemaking and will become effective only after the rule is issued.

While funds are apportioned based only on fixed guideway and high intensity motorbus segments that have been in operation seven years or longer, a recipient may use the funds apportioned to it for eligible maintenance, replacement, and rehabilitation projects on any part of its existing fixed guideway system. Eligible capital projects are those necessary to maintain fixed guideway systems in a state of good repair, including projects to replace and rehabilitate:

i. Rolling stock;

ii. Track;

iii. Line equipment and structures;

iv. Signals and communications;

v. Power equipment and substations;

vi. Passenger stations and terminals;

vii. Security equipment and systems;

viii. Maintenance facilities and equipment;

ix. Operational support equipment, including computer hardware and software;

x. Development and implementation of a transit asset management plan; and

xi. Other replacement and rehabilitation projects FTA determines appropriate.

Allowable activities within eligible replacement projects include the replacement of older features with new ones. Allowable activities within eligible rehabilitation projects include the incorporation of current design standards and additional features required by Federal law. Equipment, vehicles, and facilities to be replaced must have reached or exceeded its minimum useful life to be eligible for SGR funds.

In addition to replacement and rehabilitation, new maintenance facilities or maintenance equipment are eligible if needed to maintain the existing fixed guideway system or equipment in a state of good repair. Also, preventive maintenance activities are eligible.

FTA will permit expansion of capacity within eligible replacement projects to meet current or projected short-term service needs (*e.g.,* replacing a maintenance facility with a larger facility, or replacing a bus with a larger bus). For any expansion elements included in a replacement project, the grantee will need to address how the project meets current or short term service levels. FTA will review the reasonableness of such expansion elements when reviewing the grant.

4. Period of Availability

The SGR funds apportioned in this notice are available for obligation during FY 2015 plus three additional years. Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2018. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2018 will revert to FTA for reapportionment under the SGR Program.

5. Other Program Information

Projects that maintain and rehabilitate capital assets used for bus service other than on High Occupancy Vehicle (HOV) lanes, such as High Occupancy Toll (HOT) lanes, are not eligible for high intensity motorbus funds. High intensity motorbus funds may be used for public transportation service provided on HOV lanes during peak hours. Apportionment changes resulting from the exclusion of bus service other than on HOV will take effect in FY 2016.

R. Bus and Bus Facilities Formula Grants (49 U.S.C. 5339)

MAP–21 established the Bus and Bus Facilities Formula program, replacing some of the elements of the former Bus and Bus Facilities discretionary program under SAFETEA–LU. The program provides funding to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities.

Eligible recipients are designated recipients and States that operate or allocate funding to fixed-route bus operators. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. While the statute limits eligible recipients to fixed route bus operators or those entities that allocate funding to fixed route bus operators, eligible projects are not restricted to fixed route bus capital projects.

FTA is in the process of finalizing the program circular (FTA Circular 5100.1), which was published for notice and comment in July 2014. In the meantime, recipients should review the sections below for interim program guidance combined with the previously published interim guidance contained in the FY 2013 Apportionment Notice, dated October 16, 2012. For more information about the Bus and Bus Facilities program, *contact Sam Snead, Office of Transit Programs, at (202) 366–1089 or samuel.snead@dot.gov.*

1. FY 2015 Funding Availability

The FY 2015 Appropriations provides a total of $284,809,315 for the Bus and Bus Facilities program. After the take-down for the States and Territories (National Distribution), $241,202,466 is available to be apportioned to the UZAs, as shown below.

BUS AND BUS FACILITIES—FY 2015

Total Appropriation	$284,809,315
State and Territory Allocation	−43,606,849
Total Apportioned	241,202,466

Table 12 shows the FY 2015 Bus and Bus Facilities formula apportionments to States, Territories, and UZAs.

2. Basis for Allocation

Funds are apportioned according to a statutory formula. However, State and Territories (including the District of Columbia and Puerto Rico) receive a fixed allocation before FTA applies the formula. This fixed allocation, referred to as the National Distribution allocation, provides each State $832,192 and each territory $332,877. These funds are available for use anywhere in the State or Territory. The remainder of the funding is apportioned for UZAs based on population, vehicle revenue miles and passenger miles and is specifically for use in UZAs.

For large UZAs, the Designated Recipient(s) work with interested parties, including the MPO, to allocate amounts among eligible subrecipients. The Designated Recipient in consultation with interested parties should determine the subarea allocation fairly and rationally through a process based on local needs.

Pursuant to section 5339(c)(2), except for the funds set aside for distribution to each state, funds available to carry out section 5339 are apportioned consistent with the formula set forth in section 5336 other than subsection (b). Pursuant to section 5336(e), the Governor exercises the authority to allocate section 5339 formula apportionments to all small UZAs within the State—including those that lie within the planning areas of MPOs serving TMAs. Federal law clearly states that it is up to the State to determine the distribution method for section 5339 funds among small UZAs, and inclusion of small UZAs within the planning area of an MPO that serves a transportation management area (TMA) does not change the status of those small UZAs. They are still small UZAs and subject to the Governor's allocation. There is no legal prohibition to the Governor allocating the apportioned funds through competition. Regardless of how the State decides to allocate the section 5339 bus funds, the MPO, the State, and the transportation operators are reminded that, with exceptions not relevant in this case, projects not included in a federally-approved Statewide Transportation Improvement Program (STIP) will not be eligible to receive those program funds. (See 23 CFR 450.330(d)).

3. Requirements

Eligible capital projects include projects to replace, rehabilitate, and purchase buses and related equipment, and projects to construct bus-related facilities. This includes the acquisition of buses for fleet and service expansion, bus maintenance and administrative facilities, transfer facilities, bus malls, transportation centers, intermodal terminals, park-and-ride stations, acquisition of replacement vehicles, bus rebuilds, passenger amenities such as passenger shelters and bus stop signs, accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fare boxes, computers, and shop and garage equipment. While bus rehabilitation activities (*e.g.* rebuilds to extend the useful life) are eligible, preventive maintenance is not eligible under this program. The draft circular included language that stated that mid-life overhauls are not eligible as they are a form of preventive maintenance. FTA is reviewing comments related to this topic as well as others and will address those comments in the **Federal Register** notice accompanying the publication of the final circular. The grant requirements of section 5307, such as the requirement for Department of Labor Certification, apply to recipients of grants made under this section.

Section 5339 limits eligible direct (grant) recipients under this program to the Designated Recipients in large UZAs and States for all areas under 200,000 in population (small UZAs and rural areas). States are expected to be the grant recipient for the National Distribution amounts, unless the funds are transferred to a 5307 recipient. Please see additional guidance for permissible transfers in ''Other Program Information'' section below.

A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, unless a recipient of a grant provides additional local matching amounts. The local match shall be provided in cash from non-Government sources other than revenues from providing public transportation services; from revenues derived from the sale of advertisement or concessions; from undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; or from amounts received under a service agreement with a State or local social service agency or private social service organization.

FTA is in the process of finalizing the circular for this formula program. In the meantime, grantees can utilize program guidance and requirements found in this notice along with the interim guidance published in the **Federal Register** on October 16, 2012 (See 77 FR 63669), combined with the FTA circular for the former discretionary Bus program, which can be found in FTA Circular 9300.1B, *Bus and Bus Facilities Instructions.*

4. Period of Availability

The Bus and Bus Facilities Formula Program funds apportioned in this notice are available for obligation during FY 2015 plus three additional years. Accordingly, funds apportioned in FY 2015 must be obligated in grants by September 30, 2018. Any FY 2015 apportioned funds that remain unobligated at the close of business on September 30, 2018 will revert to FTA for reapportionment under the Bus and Bus Facilities Formula Program.

5. Other Program Information

The only allowable transfer provision for these program funds to another FTA program applies to the National Distribution allocation. The Governor of a State may transfer any part of the State's National Distribution amounts to supplement funding under the rural areas (section 5311) or urbanized areas (5307) formula programs. If transferred to a 5307 direct recipient (in a large or small UZA), FTA will permit the recipient to apply directly for the funds in a 5307 grant. However, the funds can only be used for purposes eligible under Section 5339.

As for the funding apportioned by formula, for small UZAs, the Governor has flexibility to allocate the funds among the small UZAs to meet the capital bus needs in those areas.

S. Growing States and High Density States Formula Factors (49 U.S.C. 5340)

FTA continues to use formula factors (established under 49 U.S.C. 5340) to distribute additional funds to the section 5307 and section 5311 programs for Growing States and High Density States. FTA publishes single UZA and rural apportionments that show the total amount for 5307 and 5311 programs that includes apportionments for these programs together with section 5340.

1. FY 2015 Funding Availability

The FY 2015 Appropriation provides $350,119,726 to be apportioned using the formula factors prescribed for Growing States and High Density States set forth in section 5340.

2. Basis for Allocation

Under the Growing States portion of the section 5340 formula, 50 percent of funds are allocated to States on the basis of their projected population growth. FTA projects each State's 2025 population by comparing each State's apportionment year population (as determined by the Census Bureau) to the State's 2010 Census population and extrapolating to 2025 based on each State's rate of population growth between 2010 and the apportionment year. Each State receives a share of Growing States funds on the basis of its projected 2025 population relative to the nationwide projected 2025 population.

Once each State's share is calculated, funds attributable to that State are divided into an UZA allocation and a non-UZA allocation on the basis of the percentage of each State's 2010 Census population that resides in UZA and non-UZA areas. Urbanized areas receive portions of their State's urbanized area allocation on the basis of the 2010 Census population in that UZA relative to the total 2010 Census population in all UZAs in the State. These amounts are added to the UZA's section 5307 apportionment.

The States' rural area allocation is added to the allocation that each State receives under the section 5311 Formula Grants for Rural Areas program.

The remaining 50 percent of the section 5340 funds are allocated under

the High Density States portion of the section 5340 formula. These funds are allocated to UZAs in States with a population density equal to or greater than 370 persons per square mile. Based on this threshold and 2010 Census data, the States that qualify are Maryland, Delaware, Massachusetts, Connecticut, Rhode Island, New York and New Jersey (these are the same States that qualified under SAFETEA–LU). The amount of funds provided to each of these seven States is allocated on the basis of the population density of the individual State relative to the population density of all seven States. Once funds are allocated to each State, funds are then allocated to UZAs within the States on the basis of an individual UZA's population relative to the population of all UZAs in that State.

FTA cannot provide unit values for the Growing States or High Density formulas because the apportionments to individual States and UZAs are based on their relative population data, rather than on a national per capita basis.

T. Washington Metropolitan Area Transit Authority Grants

The FY 2015 Appropriations provides $150,000,000 for grants to the Washington Metropolitan Area Transit Authority (WMATA). Such funding is authorized under section 601 of the Passenger Rail Investment and Improvement Act of 2008. See Public Law 110–432, Division B, Title VI.

Grants may be provided for capital and preventive maintenance expenditures for WMATA after (1) FTA certifies that WMATA is making significant progress in eliminating the material weaknesses, significant deficiencies, and minor control deficiencies in the most recent Financial Management Oversight Review; and (2) FTA determines that WMATA has placed the highest priority on investments that will improve the safety of the system.

FTA will communicate further program requirements directly to WMATA.

V. FTA Policy and Procedures for FY 2015 Grants

A. Automatic Pre-Award Authority To Incur Project Costs

This section includes some changes to automatic pre-award authority published in previous notices, particularly in light of the new authorization and several new formula programs, some of which will require new Designated Recipients before projects costs can be reimbursed.

1. Caution to New Grantees and for New Formula Programs

While FTA provides pre-award authority to incur expenses before grant award for formula programs, it recommends that first-time grant recipients and recipients of grants under new formula programs NOT utilize this automatic pre-award authority without verifying with the appropriate FTA Regional Office that all pre-requisite requirements have been met. As a new grantee, it is easy to misunderstand pre-award authority conditions and be unaware of all of the applicable FTA requirements that must be met in order to be reimbursed for project expenditures incurred in advance of grant award. FTA programs have specific statutory requirements that are often different from those for other Federal grant programs with which new grantees may be familiar. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (*e.g.,* prior to NEPA completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

2. Policy

FTA provides pre-award authority to incur expenses before grant award for certain program areas described below. This pre-award authority allows grantees to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This pre-award spending authority permits an eligible grantee to incur costs on an eligible transit capital, operating, planning, or administrative project without prejudice to possible future Federal participation in the cost of the project. In this notice, FTA provides pre-award authority until September 30, 2017 for capital assistance under all formula programs, so long as the conditions described below are met. Historically, FTA provides pre-award authority until the end of the authorization period and then extends it in one to two year increments. Recipients entering into any contracts that assume federal funding beyond September 30, 2017, should contact their Regional Office to request a letter of no prejudice (see section below). FTA provides pre-award authority for planning and operating assistance under the formula programs without regard to the period of the authorization. For a discretionary program in which FTA publishes a Notice of Funding Availability (NOFA), recipients should refer to the specific NOFA or notice of award for specific details as to the eligibility of pre-award authority for that funding opportunity. Additional information pertaining to specific uses of pre-award authority is below:

i. Operating, Planning, or Administrative Assistance. FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the formula grant programs. Grantees may be reimbursed for expenses incurred before grant award so long as funds have been expended in accordance with all Federal requirements, and the grantee is otherwise eligible to receive the funding. In addition to cross-cutting Federal grant requirements, program specific requirements must be met. For example, a planning project must have been included in a Unified Planning Work Program (UPWP); a 5310 project must have been included in a coordinated public transit-human services transportation plan (coordinated plan) and selected by the Designated Recipient before incurring expenses; expenditure on State Administration expenses under State Administered programs must be consistent with the State Management Plan (as defined in the most current version of FTA Circular 9040.1, Chapter 6). Designated Recipients for section 5310 have pre-award authority for the ten percent of the apportionment they may use for program administration.

ii. Transit Capital Projects. For transit capital projects, the date that costs may be incurred is: (1) For design and environmental review, the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project; (2) for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project; and (3) for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that require a categorical exclusion pursuant to 23 CFR 771.118(d), an environmental assessment, or an environmental impact statement, the date that FTA completes the environmental review process required by NEPA and its implementing regulations by its issuance of a Section 771.118(d) categorical exclusion

determination, a Finding of No Significant Impact (FONSI), or a Record of Decision (ROD). For projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), if a project is subsequently found not to qualify for this CE, it will be ineligible for FTA assistance. FTA recommends that any grant applicant that is concerned that a larger project may not clearly qualify for the CEs at 23 CFR 771.118(c)(8), (c)(9), (c)(10), (c)(12), and (c)(13), contact FTA's Regional Office for assistance in determining the appropriate environmental review process and level of documentation necessary before incurring costs for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials.

iii. New Starts, Small Starts and Core Capacity Projects. The pre-award authority described above does not apply to section 5309 Fixed Guideway Capital Investment Grant Program (CIG) projects. Specific instances of pre-award authority for CIG Program projects are described in paragraph 4 below. If pre-award authority has not been granted for a particular type of work on a CIG program project, the project sponsor must obtain a written Letter of No Prejudice (LONP) from FTA before starting that work. To obtain an LONP for a CIG program project, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA Regional Office, as described in Section 4. below.

iv. Research, Technical Assistance, and Training. Unless provided for in an announcement of project selections, pre-award authority does not apply to section 5312 Research, development, demonstration, and deployment projects, section 5314 Technical Assistance and Standards Development, or section 5322 Human Resources and Training. Before an applicant may incur costs for activities under these programs, it must first obtain a written Letter of No Prejudice (LONP) from FTA. To obtain an LONP for a Research, Technical Assistance or Training project, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA headquarters office. Information about LONP procedures may be obtained from the appropriate headquarters office.

3. Conditions

Before incurring costs, grantees are strongly encouraged to consult with the appropriate FTA Regional Office regarding the eligibility of the project for future FTA funds and for questions on environmental requirements, or any other Federal requirements that must be met.

The conditions under which pre-award authority may be utilized are specified below:

i. Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

ii. All FTA statutory, procedural, and contractual requirements must be met.

iii. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

iv. Local funds expended by the grantee after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant or grant amendment for the project. Local funds expended by the grantee before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds or undertaking of project implementation activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (*i.e.,* the completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

v. The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

vi. For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

vii. When a grant for the project is subsequently awarded, the initial Federal Financial Report, in TEAM-Web (or, its successor, TrAMS), must indicate the use of pre-award authority.

viii. Planning, Environmental, and Other Federal requirements.

All Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. The growth of the Federal transit program has resulted in a growing number of inexperienced grantees who find compliance with Federal planning and environmental laws increasingly challenging.

FTA has modified its approach to pre-award authority, and the date that costs may be incurred is as follows. For design and environmental review, costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that require a categorical exclusion pursuant to 23 CFR 771.118(d), an environmental assessment, or an environmental impact statement, costs may be incurred as of the date that FTA completes the environmental review process required by NEPA and its implementing regulations (*i.e.,* through issuance of a Section 771.118(d) categorical exclusion determination, a Finding of No Significant Impact (FONSI), or a Record of Decision (ROD)). For pre-award authority triggered by the completion of the NEPA process, the completion of planning and air quality requirements is a prerequisite, as those activities are completed prior to conclusion of the environmental review process.

The requirement that a project be included in a locally-adopted Metropolitan Transportation Plan, the metropolitan transportation improvement program and federally approved statewide transportation improvement program (23 CFR part 450) must be satisfied before the grantee may advance the project beyond planning and preliminary design with non-Federal funds under pre-award authority triggered by the completion of the NEPA process. If the project is located within an EPA-designated non-attainment or maintenance area for air quality, the conformity requirements of the Clean Air Act, 40 CFR part 93, must also be met before the project may be advanced into implementation-related activities under pre-award authority triggered by the completion of the NEPA process. For projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), if a project is subsequently found not to qualify for this CE, it will be ineligible for FTA assistance. For all other projects, compliance with NEPA and other

environmental laws and executive orders (*e.g.,* protection of parklands, wetlands, and historic properties) must be completed before State or local funds are spent on implementation activities, such as site preparation, construction, and acquisition, for a project that is expected to be subsequently funded with FTA funds.

For a planning project to have pre-award authority, the planning project must be included in a MPO-approved Unified Planning Work Program (UPWP).

ix. Federal procurement procedures, as well as the whole range of applicable Federal requirements (*e.g.,* Buy America, Davis-Bacon Act, Disadvantaged Business Enterprise (DBE)) must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority.

x. Recipients exercising pre-award authority to update, repair, or modernize stations, must be mindful that the DOT ADA regulations at 49 CFR 37.161(b) provide that an accessibility feature must be repaired promptly if it is damaged or out of order. When the accessibility feature is out of order, a Recipient must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature. The rule does not, and probably could not, state a time limit for making particular repairs, given the variety of circumstances involved. However, repairing accessible features must be made a high priority. Allowing obstructions or out of order accessibility equipment to persist beyond a reasonable period of time would violate part 37, as would mechanical failures due to improper or inadequate maintenance. Failure of the entity to ensure that accessible routes are free of obstruction and properly maintained, or failure to arrange prompt repair of inoperative elevators, lifts, or other accessibility-related equipment, would also violate part 37.

xi. All program specific requirements must be met. For example, projects under section 5310 must comply with specific program requirements, including coordinated planning.

xii. Recipients exercising pre-award authority are expected to comply with the DBE regulations. The Department of Transportation's DBE program helps small businesses owned by socially and economically disadvantaged individuals to compete in the marketplace, and is designed to support the people who create jobs—our nation's entrepreneurs. When procuring vehicles, recipients are reminded of the requirements of 49 CFR 26.49(a), which requires ''if you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal'' and ''as a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.'' Recipients are advised that it is not enough to accept a certification stating that ''FTA has not disapproved'' of a TVMs DBE goal. Rather, Recipients must ensure that the TVM has submitted a goal to FTA and FTA has either approved it or not disapproved it. A recipient may request from FTA verification that a TVM has submitted a DBE goal to FTA for its review. Please email your Regional Civil Rights Officer regarding your request and FTA will respond via email within five business days. Furthermore, to assist with TVM certification compliance, FTA maintains a web posting of all certified TVMs located at *http://www.fta.dot.gov/12326_5626.html.* Finally, FTA takes the position that failure by a Recipient to verify a TVM's eligibility to bid on an FTA-assisted contract prior to award cannot be cured after award of the contract and will likely result in FTA declining to provide Federal funding for the vehicle procurement.

4. Pre-Award Authority for the Fixed Guideway Capital Investment Program (New and Small Starts Projects and Core Capacity Projects)

Projects proposed for section 5309 Capital Investment Grants (CIG) program funds are required to follow a process defined in law. For New Starts and Core Capacity projects, this process includes three phases—project development (PD), engineering, and construction. For Small Starts projects, this process includes two phases—PD and construction. After receiving a letter from the project sponsor requesting entry into the PD phase, FTA must respond in writing within 45 days whether the information was sufficient for entry. If FTA's correspondence indicates the information was sufficient and the New Starts, Small Starts or Core Capacity project may enter PD, FTA extends pre-award authority to the project sponsor to incur costs for PD activities. PD activities include the work necessary to complete the environmental review process and as much engineering and design activities as the project sponsor believes are necessary to support the environmental review process. Upon completion of the environmental review process for a New Starts, Small Starts, or Core Capacity Improvement project with a ROD, FONSI, or CE determination by FTA, FTA extends pre-award authority to project sponsors in PD to incur costs for as much engineering and design as needed to develop a reasonable cost estimate and financial plan for the project, utility relocation, and real property acquisition and associated relocations for any property acquisitions not already accomplished as a separate project for hardship or protective purposes or right-of-way under 49 U.S.C. 5323(q). Upon receipt of a letter notifying a New Starts or Core Capacity project sponsor of the project's approval into the engineering phase, FTA extends pre-award authority for any remaining engineering and design, demolition, vehicle purchases, and procurement of long lead items for which market conditions play a significant role in the acquisition price. The long lead items include, but are not limited to, procurement of rails, ties, and other specialized equipment, and commodities. Please contact the FTA Regional Office for a determination of activities not listed here, but which meet the intent described above. FTA provides this pre-award authority in recognition of the long-lead time and complexity involved with purchasing vehicles as well as their relationship to the ''critical path'' project schedule. FTA cautions grantees that do not currently operate the type of vehicle proposed in the project about exercising this pre-award authority. FTA encourages these sponsors to wait until later in the process when project plans are more fully developed. FTA reminds project sponsors that the procurement of vehicles must comply with all Federal requirements including, but not limited to, competitive procurement practices, the Americans with Disabilities Act, and Buy America. FTA encourages project sponsors to discuss the procurement of vehicles with FTA in regards to Federal requirements before exercising pre-award authority. Because there is not a formal engineering phase for Small Starts projects, FTA does not extend pre-award authority for demolition, vehicle purchases and procurement of long lead items. Instead, this work must await receipt of a construction grant award.

i. Real Property Acquisition

As noted above, FTA extends pre-award authority for the acquisition of real property and real property rights for fixed guideway capital investment

projects (New or Small Starts or Core Capacity) upon completion of the environmental review process for that project. The environmental review process is completed when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. With the limitations and caveats described below, real estate acquisition may commence, at the project sponsor's risk. For FTA-assisted projects, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24. This pre-award authority is strictly limited to costs incurred: (i) To acquire real property and real property rights in accordance with the URA regulation, and (ii) to provide relocation assistance in accordance with the URA regulation. This pre-award authority is limited to the acquisition of real property and real property rights that are explicitly identified in the final environmental impact statement (FEIS), environmental assessment (EA), or CE document, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or CE determination. This pre-award authority regarding property acquisition that is granted at the completion of the environmental review process does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA, with one exception. That exception is when a building that has been acquired, has been emptied of its occupants, and delaying demolition poses a potential fire safety hazard or other hazard to the community in which it is located, or is susceptible to reoccupation by vagrants. Demolition of the building is also covered by this pre-award authority upon FTA's written agreement that the adverse condition exists. Pre-award authority for property acquisition is also provided when FTA makes a CE determination for a protective buy or hardship acquisition in accordance with 23 CFR 771.117(d)(12). Pre-award authority for property acquisition is also provided when FTA completes the environmental review process for the acquisition of right-of-way as a separate project in accordance with 49 U.S.C. 5323(q). Guidance on this approach to property acquisition is available on FTA's Web site.

When a tiered environmental review in accordance with 23 CFR 771.111(g) is used, pre-award authority is NOT provided upon completion of the first tier environmental document except when FTA signs the Tier-1 ROD or FONSI and explicitly provides such pre-award authority for a particular identified acquisition. Project sponsors should use pre-award authority for real property acquisition relocation assistance with a clear understanding that it does not constitute a funding commitment by FTA. FTA provides pre-award authority upon completion of the environmental review process for real property acquisition and relocation assistance to maximize the time available to project sponsors to move people out of their homes and places of business, in accordance with the requirements of the URA, but also with maximum sensitivity to the circumstances of the people so affected.

ii. Reimbursement of Costs Incurred Under Pre-Award Authority

Although FTA provides pre-award authority for property acquisition, long lead items, and vehicle purchases upon completion of the environmental review process, FTA will not make a grant to reimburse the sponsor for real estate activities, vehicle purchases or purchases of long lead items conducted under pre-award authority until the project receives its construction grant. This is to ensure that Federal funds are not risked on a project whose advancement into construction is still not yet assured.

iii. National Environmental Policy Act (NEPA) Activities

NEPA requires that major projects proposed for FTA funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives to avoid and reduce adverse impacts. Projects of more limited scope also need a level of environmental review, either to support an FTA finding of no significant impact (FONSI) or to demonstrate that the action is categorically excluded (*i.e.,* CE) from the more rigorous level of NEPA review. FTA's regulation titled ''Environmental Impact and Related Procedures,'' at 23 CFR part 771 states that a grant applicant's costs for the preparation of environmental documents requested by FTA are eligible for FTA financial assistance (23 CFR 771.105(e)). Accordingly, FTA extends pre-award authority for costs incurred to comply with NEPA regulations and to conduct NEPA-related activities, effective as of the earlier of the following two dates: (1) The date of the Federal approval of the relevant STIP or STIP amendment that includes the project or any phase of the project, or that includes a project grouping under 23 CFR 450.216(j) which includes the project; or (2) the date that FTA approves the project into project development. The grant applicant must notify the FTA Regional Office upon initiation of the Federal environmental review process in accordance with the FTA Administrator's ''Dear Colleague'' letter the dated February 24, 2011. NEPA-related activities include, but are not limited to, public involvement activities, historic preservation reviews, section 4(f) evaluations, wetlands evaluations, endangered species consultations, and biological assessments. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and associated engineering, and to prepare environmental, historic preservation and related documents. When a New Starts, Small Starts, or Core Capacity project is granted pre-award authority for the environmental review process, the reimbursement for NEPA activities conducted under pre-award authority may be sought at any time through section 5307 (Urbanized Area Formula Program), section 5309, or the flexible highway programs (STP and CMAQ). As with any pre-award authority, FTA reimbursement for costs incurred is not guaranteed.

iv. Other New and Small Starts and Core Capacity Project Activities Requiring Letter of No Prejudice (LONP)

Except as discussed in paragraphs i through iii above, a major capital investment project sponsor must obtain a written LONP from FTA before incurring costs for any activity. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA Regional Office, as described in B below.

B. Letter of No Prejudice (LONP) Policy

1. Policy

LONP authority allows an applicant to incur costs on a project utilizing non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects and project activities not covered by automatic pre-award authority. The majority of LONPs will be for section 5309 Capital Investment Grant (CIG) program (New or

Small Starts or Core Capacity) projects undertaking activities not covered under automatic pre-award authority. LONPs may be issued for formula and discretionary funds beyond the life of the current authorization or FTA's extension of automatic pre-award authority, which, by way of this notice, has been extended until September 30, 2017; however, the LONP is limited to a five-year period, unless otherwise authorized in the LONP. Recipients preparing to enter into contracts that assume federal funding beyond September 30, 2017, should contact their Regional Office to pursue a LONP.

2. Conditions and Federal Requirements

The conditions and requirements for pre-award authority specified in Section V.A.2 and V.A.3. above apply to all LONPs. Because project implementation activities may not be initiated before completion of the environmental review process, FTA will not issue an LONP for such activities until the environmental review process has been completed with a ROD, FONSI, or CE determination.

3. Request for LONP

Before incurring costs for project activities not covered by automatic pre-award authority, the project sponsor must first submit a written request for an LONP, accompanied by adequate information and justification, to the appropriate Regional Office and obtain FTA's written approval. FTA approval of an LONP is determined on a case-by-case basis. Receipt of Federal funding under the capital investment program is not implied or guaranteed by an LONP.

C. FY 2015 Annual List of Certifications and Assurances

On October 31, 2014, FTA published a Notice of Availability in the **Federal Register** stating that the FY 2015 Certifications and Assurances are available on the FTA Web site at *http://www.fta.dot.gov* and in TEAM-Web at *http://ftateamweb.fta.dot.gov.* The FY 2015 Certifications and Assurances must be used for all grants and cooperative agreements awarded in FY 2015. All recipients with active projects are required to sign the FY 2015 Certifications and Assurances within 90 days after its publication.

D. Civil Rights Requirements

1. Disadvantaged Business Enterprise (DBE)

The Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program is an affirmative action program designed to combat discrimination and its continuing effects by providing contracting opportunities on Federally-funded highway, transit, and airport projects for small businesses owned and controlled by socially and economically disadvantaged individuals. Over the years, the Department has met or exceeded the national aspirational goal established by Congress in the statutes authorizing the program since 1983 and has made continuous program improvements. The Department's 2014 Final Rule, which went into effect on November 5, 2014, contains important improvements to the implementation and administration of the DBE program regulations.

First, the Department revised its standard Uniform Certification application to remove unnecessary details (*e.g.,* the phone number and address of applicant's bank). The application now includes new items useful to certifiers such as State departments of transportation, transit authorities, and airports. For example, the Personal Net Worth form is an adaptation of the SBA Form 413 tailored to DBE program requirements. All applicants must use this simplified form to document the economic status of the disadvantaged owner(s). The spouse of a disadvantaged owner who is involved in the operation of the firm must also submit a personal net worth form with the application.

Second, the Uniform Report of DBE Awards or Commitments and Payments captures data on minority women-owned DBEs and actual payments to DBEs during the reporting period. FTA recipients will continue reporting in TEAM until the new DBE reporting module is finalized in TrAMS, which we expect to be completed by the June 1, 2015 reporting cycle.

Third, MAP–21 requires State Departments of Transportation, on behalf of the Unified Certification Program, submit the percentage of DBEs in the state owned by non-minority women, minority women, and minority men. All reports must be submitted by January 1, 2015 to the USDOT Departmental Office of Civil Rights at *DBE@dot.gov.*

Fourth, bidders/offerors that are required to submit DBE information for a DOT-assisted contract that contains a DBE goal must provide the information at the time of bid (as a matter of responsiveness) or no later than seven days after bid opening (as a matter of responsibility). The seven days period will be reduced to five days beginning January 1, 2017. The DBE information submitted must include the North American Industrial Classification System code applicable to the kind of work the DBE will perform on the contract, and, when a non-DBE subcontractor is selected over a DBE, copies of the quotes from each DBE and non-DBE subcontractor. The bidder/offeror shall make copies of DBE subcontracts available upon request. In addition, the Final Rule provides additional examples of the ways to evaluate good faith efforts. A bidder/offeror will not be deemed to demonstrate good faith if it rejects a DBE simply because it is not the low bidder, or if it is unable to find a replacement DBE at the original price, without more. When evaluating the efforts of the low bidder to meet the contract goal, recipients should review the performance of other bidders.

Fifth, regarding transit vehicle manufacturers (TVMs), the Final Rule adds a definition for TVM that includes ferry boat manufacturers. Recipients purchasing ferries must ensure that they purchase from entities that have been approved by FTA and are therefore on FTA's TVM Web page (*http://www.fta.dot.gov/12326_5626.html*) or they have submitted a goal that has not been disapproved by FTA. Please contact your Regional Civil Rights Officers if you are unsure that the entity has submitted a DBE goal to FTA. FTA will develop a Memorandum of Understanding with the Federal Highway Administration (FHWA) so ferry purchases with FHWA funding will also be subject to the TVM provisions (*i.e.,* approved by FTA and listed on FTA's TVM Web site).

Sixth, recipients are advised that including DBE goals on federally assisted vehicle purchases, without FTA's prior approval, is impermissible. All requests should be submitted to Britney Berry at *britney.berry@dot.gov* for FTA approval.

Lastly, in order to provide appropriate flexibility in implementing TVM DBE provisions, FTA reminds recipients that overly prescriptive contract specifications on vehicle procurements eliminate opportunities for DBEs in vehicle manufacturing and counter the intent of the DBE program. FTA is acutely aware that recipients identify specific major system suppliers in the request for proposals (RFPs), which effectively excludes small businesses and DBEs from the most lucrative portion of the vehicle contract: The major systems. FTA urges recipients to explore ways that encourage TVMs and major systems suppliers to implement supplier diversity and development programs, which will assist TVMs in achieving their DBE goals.

2. Title VI of the Civil Rights Act of 1964

The U.S. DOT's Title VI implementing regulations are found in 49 CFR part 21. FTA's Title VI Circular (4702.1B) provides guidance on carrying out the regulatory requirements. For recipients in urbanized areas of 200,000 or more in population and with 50 or more fixed-route vehicles in peak service, the recipient must conduct a service equity analysis for all service changes that meet the recipient's definition of ''major service change'' prior to implementing the service change. Recipients also must conduct a fare equity analysis for all fare increases or decreases prior to implementing a fare change. Furthermore, an environmental justice analysis is not a substitute for a Title VI service equity analysis triggered by a major service change or fare change. As recipients prepare their budgets, it is vitally important that an appropriate major service change or fare change analysis is completed prior to taking the proposed action. Should you have any questions, please contact your Regional Civil Rights Officer.

3. Americans With Disabilities Act (ADA)

FTA has developed a 12 chapter Circular regarding recipient compliance with ADA requirements. A notice was published in the **Federal Register** on November 12, 2014, regarding the availability of seven chapters that are open for public comment. The comment period for these seven chapters was originally set to close on January 12, 2015. At the request of the American Public Transit Association, FTA has extended the comment period for another 30 days or until February 12, 2015.

E. FHWA ''Flex Funding'' and Consolidated Planning Grants

Certain Federal-aid highway program funds under the title 23 may be transferred or ''flexed'' to FTA for eligible Title 49, Chapter 53 purposes. These Title 23 programs include the Surface Transportation Program (23 U.S.C. 133) (STP), the Transportation Alternatives Program (23 U.S.C. 101) (TAP), the Congestion Mitigation and Air Quality Improvement Program (23 U.S.C. 149) (CMAQ), the National Highway Performance Program (23 U.S.C. 119) (NHPP).

1. Transferring Title 23 Funds From FHWA to FTA

Section 104(f) of title 23 U.S.C. allows FHWA, at the request of the State, to transfer funds for transit capital projects and eligible operating activities that have been designated as part of the metropolitan and statewide planning and programming process. The project must be included in an approved STIP before the funds can be transferred. The State DOT may request, by letter, that the FHWA Division Office transfer highway funds for a transit project. The letter should include a description of the project as contained in the STIP, the amount to be transferred, the apportionment year, State, urbanized area, Federal-aid apportionment category (*i.e.,* STP, CMAQ, TAP, NHPP) or other funding source, indication of the intended recipient and the FTA formula program (*i.e.,* section 5307, 5310, or 5311). As noted in the CMAQ paragraph below, requests to transfer CMAQ funding from FHWA to FTA must also clearly identify the amount to be used for operating assistance.

Once a written request for transfer is received (using FHWA transfer request form 1576), if, upon review, the FHWA Division Office concurs in the transfer, it provides written confirmation to the State DOT and FTA that the apportionment amount is available for transfer. The FHWA Division Office provides the transfer request to the FHWA Office of Budget which transfers the funds to FTA.

FHWA funds transferred to FTA will be administered under one of the three FTA formula programs (*i.e.,* Urbanized Area Formula (section 5307), Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities (section 5310), or Formula Grants for Rural Areas (section 5311)). Unobligated balances for High Priority projects under Section 1702 of SAFETEA–LU or Transportation Improvement projects under Section 1934 of SAFETEA–LU and other such funds for which Congress has identified a particular project that are transferred to FTA will be aligned with and administered through FTA's Urbanized Area Formula Grant Program (section 5307). Under 23 U.S.C. 104(f), FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA.

Transferred funds may be used for a capital transit purpose eligible under the FTA formula program to which they are transferred. MAP–21 revised the operating assistance eligibilities under CMAQ as described in Section 3 below.

The FTA grantee's application for the project must specify the program in which the funds will be used, and the application must be prepared in accordance with the requirements and procedures governing that program. Upon review and approval of the grantee's application, FTA obligates funds for the project.

In the event that the transferred funds are not obligated for the intended purpose within the period of availability of the formula program to which they were transferred, in most instances, they become available to the State for any eligible capital transit project under the program to which they were transferred.

2. Matching Share for FHWA Transfers

Pursuant to 23 U.S.C. 104(f)(1)(B), FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA. For the STP, CMAQ, and TAP programs, this Federal share is generally 80 percent, subject to upward adjustment in sliding scale States as noted below.

For a period of time under SAFETEA–LU, CMAQ funds were available at a 100 percent Federal share. Starting on October 1, 2012, the CMAQ Federal share generally will be 80 percent. There are a few instances in which a Federal share on funds transferred from FHWA can be higher than 80 percent. In States with large areas of Indian and certain public domain lands and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transfers used to fund transit projects in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share. Also, there may be instances where the applicable Federal share may be reduced to a lower Federal share than is generally applicable, such as under the NHPP where the Federal share must be reduced to a maximum of 65 percent if the State DOT does not develop and implement an asset management plan.

Certain safety projects or projects that include an air quality or congestion relief component such as commuter carpooling and vanpooling projects using FHWA transfer funds administered by FTA may retain the same 100 percent Federal share; however, these projects are subject to a limitation for each State of an amount equal to 10 percent of the sums apportioned for programs under 23 U.S.C 104.

For further guidance, please see FHWA Order, issued on August 12, 2013 on ''Fund Transfers to Other Agencies and Among Title 23 Programs'', which is available at

http://www.fhwa.dot.gov/legsregs/directives/orders/45511.pdf.

3. CMAQ Funds for Operating Assistance

The CMAQ program, at 23 U.S.C. 149, continues to provide a flexible funding source to State and local governments for transportation projects and programs to help achieve the goals of the Clean Air Act. Funding is available for projects that reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, or particulate matter—nonattainment areas—and for areas that were out of compliance but have now met the standards—maintenance areas. Transit investments, including transit vehicle acquisitions and construction of new facilities or improvements to facilities that increase transit capacity may be eligible for CMAQ funds. For additional information on this program, refer to the Interim CMAQ Program Guidance under MAP–21 available at *http://www.fhwa.dot.gov/environment/air_quality/cmaq/*. FHWA is considering comments received on its Notice of Interim Guidance issued in the **Federal Register** on November 12, 2013 and will issue final guidance in the near future. (See 78 FR 67442–02.)

Under limited circumstances, funds may also be used for operating assistance. Refer to the Revised Interim Guidance on CMAQ Operating Assistance under MAP–21 available at *http://www.fhwa.dot.gov/environment/air_quality/cmaq,* as well as the discussion in Section III.H in this notice, for additional information.

As a reminder, all CMAQ transfer requests initiated by grantees to the MPO and State, and ultimately processed from FHWA to FTA, must clearly identify whether the CMAQ funds will be used for operating assistance or capital projects. Grantees must clearly identify the operating assistance amounts in the grant budget and, also, when requesting expenditures in ECHO-Web.

4. Consolidated Planning Grants

FTA and FHWA planning funds under both the Metropolitan Planning and State Planning and Research Programs can be consolidated into a single consolidated planning grant (CPG), awarded by either FTA or FHWA. The CPG eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first. Under the CPG, States can report metropolitan planning program expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program (20.505). Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, FTA's 20 percent local share requirement can be waived to allow FTA funds used for metropolitan planning in a CPG to be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent.

States interested in transferring planning funds between FTA and FHWA should contact the FTA Regional Office or FHWA Division Office for more detailed procedures. Current guidelines are included in FHWA's Order dated August 12, 2013, on ''Fund Transfers to Other Agencies and Among Title 23 Programs'', which is available at *http://www.fhwa.dot.gov/legsregs/directives/orders/45511.pdf.*

For further information on CPGs, contact Ann Souvandara, Office of Budget and Policy, FTA, at (202) 366–0649.

F. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes TEAM-Web, an Internet-accessible electronic grant application system, and all applications are filed electronically. As noted in Section III of this notice, beginning in April, FTA will use the TrAMS system as a replacement to TEAM.

FTA regional staff is responsible for working with grantees to review and process grant applications. In order for an application to be considered complete and for FTA to assign a grant number, enabling submission in TEAM-Web and submitted to Department of Labor (when applicable), the following requirements must be met:

- Recipient's contact information, including Dun and Bradstreet Data Universal Numbering System (DUNS), is correct and up-to-date. If requested by phone (1–866–705–5711), DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet Web site at *http://fedgov.dnb.com/webform* to obtain the number.
- Recipient has registered in the System for Award Management (SAM) and its registration is current. (*https://www.sam.gov*)
- Recipient has properly submitted its annual certifications and assurances.
- Recipient's Civil Rights submissions are current and approved.
- Documentation is on file to support recipient's status as either a designated recipient (for the program and area) or a direct recipient.
- Funding is available, including any flexible funds included in the budget, and split letters or suballocation letters on file (where applicable) to support amount being applied for in grant application.
- The project is listed in a currently approved Transportation Improvement Program (TIP); Statewide Transportation Improvement Program (STIP), or Unified Planning Work Program (UPWP).
- All eligibility issues are resolved.
- Required environmental findings are made.
- The project budget's Activity Line Items (ALI), scope, and project description meet FTA requirements.
- Local share funding source(s) is identified.
- For projects involving new construction (using at least $100 million in New Starts or formula funds), FTA has reviewed the project management plan and given approval.
- Milestone information is complete, or FTA determines that milestone information can be finalized before the grant is ready for award. FTA will also review status of other open grants' reports to confirm financial and milestone information is current on other open grants and projects.

Before FTA can award grants for discretionary projects and activities, notification must be given to the House and Senate authorizing and appropriations committees.

Other important issues that impact FTA grant processing activities are discussed below.

1. Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM) Registration

Each applicant or recipient of Federal Funds is required to: (1) Be registered in SAM before submitting its application; (2) provide a valid DUNS number in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active award or an application or plan under consideration by the Federal Transit Administration (FTA). FTA will not make an award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the FTA is ready to make a Federal award, FTA may determine that the applicant is not

qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

The System for Award Management (SAM) *https://www.sam.gov/portal/SAM/* is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is no fee to register or use this site. Entities may register and update their information at no cost directly from the above site.'' Your SAM registration (formerly CCR registration) needs to be renewed at least annually.

2. Grant Budgets—SCOPE and ALI Codes; Financial Purpose Codes

FTA uses the SCOPE and Activity Line Item (ALI) Codes in the grant budgets to track program trends, to report to Congress, and to respond to requests from the Inspector General and the Government Accountability Office (GAO), as well as to manage grants. The accuracy of the data is dependent on the careful and correct use of codes. FTA is in the process of revising the SCOPE and ALI table to include new codes for the newly eligible capital items, to better track certain expenditures, and to accommodate the new programs. FTA encourages grantees to review the table before selecting codes from the drop-down menus in TEAM-Web while creating a grant budget. Additional information about how to use the SCOPE and ALI codes to accurately code budgets will be added to the resources available through TEAM-Web.

Under sections 5307 and 5311, FTA will continue to use the SCOPE established for job access and reverse projects (646–00) in order to track the use of these program funds for this eligible purpose. Similarly, for section 5310 grants made with FY 2013 and later funds, FTA will continue to use the SCOPE established for ''new-freedom'' type projects (647–00).

In addition to SCOPE and ALI codes, FTA uses financial purpose codes (FPCs) in TEAM to identify specific funding uses and track the actual obligations and expenditures of funds to a specific use, such as capital, planning, or operating. FPCs are identified at the time program funds are reserved and must be identified when a grantee requests a draw-down in ECHO-web. The available FPCs differ by program, based on the programs eligibility. For example, in a grant for a capital-only program (*e.g.* section 5337 or 5339), the funds would be obligated using FPC 00. Grantees should be aware that several new FPCs were introduced for MAP–21 grants, particularly for section 5307, 5310, and 5311 to track eligible uses like job access and reverse commute projects (FPC 03) and new-freedom projects (FPC 03). Grantees should pay close attention to the FPCs used when their grants are obligated so they use the correct FPCs in their ECHO-Web requests. FTA will no longer use FPC codes in TRAMS.

3. Designated and Direct Recipients, Documentation and Supplemental Agreements

For its formula programs, FTA primarily apportions funds to the Designated Recipient in the large UZAs (areas over 200,000), or for areas under 200,000 (small UZAs and rural areas), it apportions the funds to the Governor, or its designee (*e.g.,* State DOT). Depending on the program and as described in the individual program sections found in Section IV of this notice, further suballocation of funds may be permitted to eligible recipients who can then apply directly to FTA for the funding (''direct recipients''), so long as the required documentation is on file. However, there are certain programs under MAP–21 whereby FTA will only award grants to the designated recipients for the area or program. These include sections 5310 and 5339.

For the programs in which FTA can make grants to eligible direct recipients, other than the Designated Recipient(s), recipients are reminded that documentation must be on file to support the (1) status of the recipient either as a Designated Recipient or direct recipient; and (2) the allocation of funds to the direct recipient. Additionally, FTA requires a supplemental agreement to be pinned to the grant in TEAM-Web prior to grant execution. The supplemental agreement is required when the recipient of the funds is not the Designated Recipient. It permits the grant recipient (*e.g.,* direct recipient) to receive and dispense the Federal funds and sets forth that the grant recipient is assuming all responsibilities of the grant agreement.

Under MAP–21, with the exception of the new UZAs resulting from the 2010 Census under the section 5307 program, the only program for which NEW designations are needed in the large urbanized areas before a grant can be made is section 5310. Before the first grant application in a large UZAs under section 5310 is submitted to FTA, the Governor must designate an agency charged with administering the Enhanced Mobility of Seniors and Individuals with Disabilities funds. This designation must be on file with the Regional Office prior to the award of any section 5310 grants in large UZAs.

For all other programs, documentation to support existing designated recipients for the UZA must also be on file at the time of the first application in FY 2015. Further, split letters and/or suballocation letters (Governor's Apportionment letters), must also be on file to support grant applications from direct recipients.

4. Payments

Once a grant has been awarded and executed, requests for payment can be processed. To process payments FTA uses ECHO-Web, an Internet accessible system that provides grantees the capability to submit payment requests on-line, as well as receive user-IDs and passwords via email. New applicants should contact the appropriate FTA Regional Office to obtain and submit the registration package necessary for set-up under ECHO-Web.

5. Oversight

FTA is responsible for conducting oversight activities to help ensure that grants recipients use FTA federal financial assistance in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements. FTA conducts periodic oversight reviews to assess grantee compliance with applicable Federal requirements. Each Urbanized Area Formula Program recipient is reviewed every three years, (also known as FTA's Triennial Review); and States and state-wide public transportation agencies are reviewed periodically to assess the management practices and program implementation of FTA state-wide programs (*e.g.,* Planning, Rural Areas, Enhanced Mobility of Seniors and Individuals with Disabilities Programs). Other more detailed reviews are scheduled based on an annual grantee oversight assessment. Important objectives of FTA's oversight program include, but are not limited to: Determining grantee compliance with Federal requirements; identifying technical assistance needs, and delivering technical assistance to meet those needs; spotting emerging issues with grantees in a forward-looking fashion; recognizing when there is a need for more in-depth reviews in the areas of procurement, financial management, and civil rights; and identifying grantees with recurring or systemic issues.

6. Technical Assistance

As noted throughout the notice, FTA continues to rely on several of the existing program circulars for general program guidance. FTA is continuing to update the program circulars, with an opportunity for notice and comment, to reflect changes under MAP–21. In the

meantime, if you have any questions, please do not hesitate to contact FTA. FTA headquarters and regional staff will be pleased to answer your questions and provide any technical assistance you may need to apply for FTA program funds and manage the grants you receive. At its discretion, FTA may also use program oversight consultants to provide technical assistance to grantees on a case by case basis. This notice and the program guidance circulars previously identified in this document may be accessed via the FTA Web site at *www.fta.dot.gov.*

G. Grant Management

Recipients of FTA funds are reminded that all FTA grantees require some level of grant reporting and that it is critical to ensure reports demonstrate reasonable progress is being made on the project. At a minimum, all grants require a Federal Financial Report (FFR) and a Milestone Progress Report (MPR) on an annual basis, with some reports required quarterly depending on the recipient and the type of projects funded under the grant. The requirements for these reports and other reporting requirements can be found in FTA Circular 5010.1D, *Grant Management Requirements,* dated August 27, 2012. FTA staff, auditors, and contractors rely on the information provided in the FFR and MPR to review and report on the status of both financial and project-level activities contained in the grant. It is critical that recipients provide accurate and complete information in these reports and submit them by the required due date. Failure to report and/or demonstrate reasonable progress on projects can result in suspension or close-out of a grant.

In FY 2015, FTA will continue to focus on inactive grants and grants that do not comply with reporting requirements and, if appropriate, will take action to close out and deobligate funds from these grants if reasonable progress is not being made. The efficient use of funds will further FTA's fulfillment of its mission to provide efficient and effective public transportation systems for the nation.

Furthermore, inactive grants continue to be a major audit finding within the Department of Transportation and FTA must take action to ensure its grants do not impact the Department not receiving a ''clean audit'' opinion on its annual financial statement audit.

In October of 2014 FTA identified a list of grants that were awarded on or prior to September 30, 2011 and have had no funds disbursed since September 30, 2012 or have never had a disbursement.

FTA Regional Offices will be contacting grant recipients with one or more grants that meet this criteria to notify them that FTA intends to close the grant and deobligate any remaining funds unless the grantee can provide information that demonstrates that the projects funded by the grant remain active and the grantee has a realistic schedule to expedite completion of the projects funded in the grant.

In addition, recipients of open American Recovery and Reinvestment Act (ARRA) grants should be aware that, as a matter of law, all remaining ARRA funds MUST be disbursed from grants by the end of the 5th fiscal year (FY) after funds were required to be obligated. (SEE 31 U.S.C. 1552.) For FTA ARRA projects, that requirement takes affect at the end of FY 2015. Accordingly, once ECHO closes for disbursements in late September 2015, all remaining funds within FTA ARRA funded grants will no longer be available to the grantee and will be deobligated from the grant. Even if a grantee has incurred costs or disbursed funds prior to the close of ECHO, if the grantee has not actually drawn down the funds by the time ECHO closes in late September, FTA will be unable to reimburse the grantee. Therefore, grantees with open ARRA grants must ensure project activities are completed and all funds are drawdown before ECHO closes by late September 2015. For ARRA TIGER 1 projects, the same requirement will be in effect for the end of FY 2016.

Therese McMillan,

Acting Administrator.

[FR Doc. 2015–02555 Filed 2–6–15; 8:45 am]

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