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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5596; Directorate Identifier 2015–NM–121–AD; Amendment 39–18677; AD 2016–20–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–12–06 for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus Model A310 series airplanes. AD 2014–12–06 required repetitive ultrasonic or detailed inspections of the external area of the aft cargo door sill beam for cracking, and repair if necessary, and provided an optional one-time high frequency eddy current (HFEC) inspection that would terminate the repetitive inspections. This new AD requires the previously optional terminating HFEC inspection, and requires that it be done repetitively. This AD was prompted by findings of multiple fatigue cracks in the aft cargo door that indicated the need for additional, repetitive, HFEC inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 3, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 2, 2014 (79 FR 34403, June 17, 2014).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5596.

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–2016–5596, or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–12–06, Amendment 39–17867 (79 FR 34403, June 17, 2014) (''AD 2014–12–06''). AD 2014–12–06 applied to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus Model A310 series airplanes. AD 2014–12–06 required repetitive ultrasonic or detailed inspections of the external area of the aft cargo door sill beam for cracking, and repair if necessary. AD 2014–12–16 also provided an optional one-time HFEC inspection that would terminate the repetitive inspections. The NPRM published in the **Federal Register** on April 27, 2016 (81 FR 24745). The NPRM was prompted by findings of multiple fatigue cracks in the aft cargo door that indicated the need for repetitive HFEC inspections. The NPRM proposed to continue to require repetitive ultrasonic or detailed inspections of the external area of the aft cargo door sill beam for cracking, and repair if necessary. The NPRM also proposed to require the previously optional terminating HFEC inspection, and to require that it be done repetitively. We are issuing this AD to detect and correct fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate. Failure of one or more of these components could result in the loss of the door locking function and, subsequently, complete loss of the cargo door in flight with the risk of rapid decompression.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0150, dated July 23, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus Model A310 series airplanes. The MCAI states:

> During accomplishment of Maintenance Review Board Report (MRBR) task 531625–01–1 on an A300–600 aeroplane having accumulated more than 25,000 flight cycles (FC) since aeroplane first flight, multiple fatigue cracks were found on the following parts:
>
> —Aft cargo door sill beam Part Number (P/N) A53973085210.
>
> —Lock fitting P/N A53978239002.
>
> —Torsion box plate P/N A53973318206.
>
> Prompted by these findings, a stress analysis was performed during which it was discovered that there is no dedicated

scheduled maintenance task to inspect the affected area for fatigue damage.

This condition, if not detected and corrected, could lead to failure of multiple lock fittings, possibly resulting in loss of the cargo door in flight and consequent explosive decompression of the aeroplane.

To address this unsafe condition, Airbus issued Alert Operators Transmission (AOT) A53W005–14 providing instructions for inspection of the affected area.

Consequently, EASA issued Emergency AD 2014–0097–E [which corresponded to FAA AD 2014–12–06] to require repetitive ultrasonic (US) inspections or detailed inspections (DET) of the aft cargo door sill beam external area, and/or a one-time High Frequency Eddy Current (HFEC) inspection of the aft cargo door sill beam internal structure and, depending on findings, accomplishment of corrective action(s).

Since that [EASA] AD was issued, the results of further analysis have indicated that repetitive HFEC inspections need to be introduced.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0097–E, which is superseded, and requires repetitive HFEC inspections of the concerned areas. The first HFEC inspection terminates the repetitive US/DET inspections.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5596.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International stated that it supports the NPRM.

Request To Rewrite Reporting Requirements

One commenter, Mark Hilborn, requested that we revise the structure of paragraph (i) of the proposed AD for clarity and to change the location where the reports should be sent. He stated that we could rewrite paragraph (i) of the proposed AD to remove the subparagraphs.

We partially agree with the request. We have updated the contact information for submitting the reports. We do not find it necessary, however, to change the remainder of the paragraph since it is restated from AD 2014–12–06, and the compliance times are correct.

Request To Clarify the Terminating Actions

Mark Hilborn requested we revise paragraph (m) of the proposed AD for clarity and to add new subparagraphs to aid in that.

We agree with the request and have changed paragraph (m) of this AD accordingly.

Additional Changes Made in This Final Rule

We have revised this AD to require the current version of the service information identified for the terminating action specified in this AD. This service information was revised to make a small tooling change; no additional work is necessary for airplanes on which the original version of this service information was accomplished. We have also added credit for airplanes on which the original version of this service information was accomplished, and made related changes accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information, which describes procedures for repetitive HFEC inspections of the cargo door sill beam, lock fitting, and torsion box plate. These service bulletins are distinct since they apply to different airplane models.

- Airbus Service Bulletin A300–53–6179, dated December 12, 2014.
- Airbus Service Bulletin A310–53–2139, dated December 12, 2014.

Airbus has also issued AOT A53W005–14, Revision 01, dated April 29, 2014, which describes procedures for doing an ultrasonic inspection or detailed inspection of the aft cargo door sill beam external area for cracking.

Additionally, Airbus has issued the following service information, which describes procedures for reinforcing the aft cargo door sill beam are between FR 60 and FR 63. These service bulletins are distinct since they apply to different airplane models.

- Airbus Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015.
- Airbus Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 75 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	12 work-hours × $85 per hour = $1,020 per inspection cycle.	N/A	$1,020 per inspection cycle.	$76,500 per inspection cycle.
Reporting	1 work-hour × $85 per hour = $85 per inspection cycle.	N/A	$85	$6,375.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800

Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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 removing AD 2014–12–06, Amendment 39–17867 (79 FR 34403, June 17, 2014), and adding the following new AD:

2016–20–11 Airbus: Amendment 39–18677; Docket No. FAA–2016–5596; Directorate Identifier 2015–NM–121–AD.

(a) Effective Date

This AD is effective January 3, 2017.

(b) Affected ADs

This AD replaces AD 2014–12–06, Amendment 39–17867 (79 FR 34403, June 17, 2014) (''AD 2014–12–06'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD, certificated in any category, all manufacturer serial numbers on which Airbus Modification 05438 has been embodied in production, except those on which Airbus Modification 12046 has been embodied in production.

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Airbus Model A300 B4–605R and B4–622R airplanes.

(3) Airbus Model A300 F4–605R and F4–622R airplanes.

(4) Airbus Model A300 C4–605R Variant F airplanes.

(5) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of fatigue cracks on the cargo door sill beam, lock fitting, and torsion box plate. We are issuing this AD to detect and correct fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, which could result in the loss of the door locking function and subsequently, complete loss of the cargo door in flight with the risk of rapid decompression.

(f) Compliance

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

(g) Retained Inspection, With Revised Service Information

This paragraph restates the requirements of paragraph (g)(1) of AD 2014–12–06, with revised service information. Within the compliance time identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable: Do an ultrasonic inspection or detailed inspection of the aft cargo door sill beam external area for cracking, in accordance with Airbus Alert Operators Transmission (AOT) A53W005–14, dated April 22, 2014; or Airbus AOT A53W005–14, Revision 01, dated April 29, 2014. Repeat the inspection thereafter at intervals not to exceed 275 flight cycles. As of the effective date of this AD, only Airbus AOT A53W005–14, Revision 01, dated April 29, 2014, may be used to comply with the requirements of this paragraph.

(1) For airplanes that have accumulated 30,000 flight cycles or more since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06): Within 50 flight cycles after July 2, 2014.

(2) For airplanes that have accumulated 18,000 flight cycles or more, but fewer than 30,000 flight cycles since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06): Within 275 flight cycles after July 2, 2014.

(3) For airplanes that have accumulated fewer than 18,000 flight cycles since the airplane's first flight as of July 2, 2014 (the effective date of AD 2014–12–06): Before exceeding 18,275 flight cycles since the airplane's first flight.

(h) Retained Optional Terminating Action, With Revised Service Information and Specific Delegation Approval Language

This paragraph restates the provisions of paragraph (h) of AD 2014–12–06, with revised service information and specific delegation approval language. Accomplishment of a high frequency eddy current (HFEC) inspection for cracking, in accordance with Airbus AOT A53W005–14, dated April 22, 2014; or Airbus AOT A53W005–14, Revision 01, dated April 29, 2014; terminates the repetitive inspections required by paragraph (g) of this AD for that airplane. If any cracking is found during the HFEC inspection, before further flight, repair 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).

(i) Retained Reporting Requirement, With Revised Contact Information

This paragraph restates the provisions of paragraph (i) of AD 2014–12–06, with revised contact information. Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to ''Airbus Service Bulletin Reporting Online Application'' on Airbus World (*https://w3.airbus.com/*), at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, including no findings.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Definition of Airplane Groups

Paragraphs (k)(1), (k)(2), and (k)(3) of this AD refer to airplane groups, as identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) Airplanes on which an HFEC inspection was accomplished as specified in Airbus AOT A53W005–14.

(2) Airplanes on which no HFEC inspection was accomplished as specified in Airbus AOT A53W005–14, and that have accumulated more than 18,000 total flight cycles as of the effective date of this AD.

(3) Airplanes on which no HFEC inspection was accomplished as specified in Airbus AOT A53W005–14, that have accumulated 18,000 total flight cycles or fewer as of the effective date of this AD.

(k) New Repetitive HFEC Inspections and Repair

At the applicable time specified in paragraph (k)(1), (k)(2), or (k)(3) of this AD: Do an HFEC inspection for fatigue cracking of the cargo door sill beam, lock fitting, and torsion box plate, in accordance with Airbus Service Bulletin A300–53–6179, dated December 12, 2014; or Airbus Service Bulletin A310–53–2139, dated December 12, 2014; as applicable. Repeat the HFEC inspection thereafter at intervals not to exceed 4,600 flight cycles.

(1) For airplanes identified in paragraph (j)(1) of this AD: Inspect within 4,600 flight cycles after the most recent HFEC inspection specified in Airbus AOT A53W005–14.

(2) For airplanes identified in paragraph (j)(2) of this AD: Inspect within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes identified in paragraph (j)(3) of this AD: Inspect before exceeding 13,000 total flight cycles since the airplane's first flight, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(l) Corrective Action

If any crack is found during any inspection required by paragraph (g) or (k) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(m) Terminating Action for Repetitive Inspections

This paragraph identifies the requirements to terminate repetitive inspections mandated by this AD.

(1) For any airplane identified in paragraphs (j)(2) and (j)(3) of this AD, accomplishment of the initial inspection required by paragraph (k) of this AD terminates the repetitive inspections required by paragraph (g) of this AD.

(2) For any airplane identified in paragraphs (c)(1) through (c)(5) of this AD, accomplishment of Airbus Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015; or Airbus Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015; as applicable; terminates the repetitive inspections required by paragraph (k) of this AD.

(n) Credit for Previous Actions

This paragraph provides credit for actions provided in paragraph (m)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300–53–6181, dated June 26, 2015; or Airbus Service Bulletin A310–53–2141, dated June 26, 2015; as applicable.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; 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:* As of the effective date of this AD, 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(4) *Required for Compliance (RC):* Except as required by paragraph (l) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0150, dated July 23, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5596.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (q)(5) and (q)(6) of this AD.

(q) 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 January 3, 2017.

(i) Airbus Alert Operators Transmission (AOT) A53W005–14, Revision 01, dated April 29, 2014.

(ii) Airbus Service Bulletin A310–53–2141, Revision 01, dated July 2, 2015.

(iii) Airbus Service Bulletin A300–53–6179, dated December 12, 2014.

(iv) Airbus Service Bulletin A300–53–6181, Revision 01, dated July 2, 2015.

(v) Airbus Service Bulletin A310–53–2139, dated December 12, 2014.

(4) The following service information was approved for IBR on July 2, 2014 (79 FR 34403, June 17, 2014).

(i) Airbus AOT A53W005–14, dated April 22, 2014.

(ii) Reserved.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 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 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 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.

(7) 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 September 28, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28335 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6895; Directorate Identifier 2015–NM–068–AD; Amendment 39–18673; AD 2016–20–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 airplanes. This AD was prompted by reports indicating that the main landing gear (MLG) could not be extended and locked down during approach. This AD requires inspection of the restrictor check valve filter screens to detect any degraded or failed filter screens, and installation of serviceable parts. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 3, 2017.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6895.

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–2016–6895; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Fokker Services B.V. Model F28 airplanes. The NPRM published in the **Federal Register** on June 1, 2016 (81 FR 34929) (''the NPRM''). The NPRM was prompted by reports indicating that the MLG could not be extended and locked down during approach. The NPRM proposed to require a detailed inspection of the restrictor check valve filter screens to detect any degraded or failed filter screens, and installation of serviceable parts. We are issuing this AD to detect and correct any degraded or failed filter screens. This condition, if not corrected, could prevent MLG extension and lock-down and result in an emergency landing with consequent injury to occupants and damage to the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0077, dated May 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F28 airplanes. The MCAI states:

> Two occurrences were reported concerning two different aeroplanes, where during approach, after selecting landing gear down, one of the main landing gears (MLG) could not be extended and locked down. In both cases, subsequent investigation revealed that the filter screen of the corresponding restrictor check valve (integrated in a hydraulic hose assembly) was broken, and debris inside the restrictor check valve was blocking the return flow from the affected MLG actuator. Additional inspection of the fleet of the operator involved revealed more damaged or failed filter screens.
>
> This condition, if not detected and corrected, could prevent MLG extension and lock-down, possibly resulting in an emergency landing with consequent damage to the aeroplane and injury to occupants.
>
> To address this unsafe condition, Fokker Services published SBF28–32–164 and SBF100–32–166 to provide instructions for removal of the affected hydraulic hoses (including the restrictor check valve) to be inspected in-shop, and for installation of serviceable parts. Fokker Services also published Component SB CSB–32–026 to provide those in-shop inspection instructions to detect any damaged filter screen.
>
> For the reasons described above, this [EASA] AD requires a onetime removal of the landing gear hydraulic hoses for the purpose of an in-shop inspection of the affected restrictor check valves filter screens and, depending on findings, re-installation, or replacement of the affected hose(s) with a serviceable part.
>
> This [EASA] AD is considered to be an interim action to detect any degraded or failed filter screens and remove them from service and to collect additional data; further [EASA] AD action may follow. More information on this subject can be found in Fokker Services All Operators Messages AOF28.041 and AOF100.189#02.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6895.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued the following service information, which describes procedures for the replacement of hydraulic hose assemblies. These service bulletins are distinct because they apply to different airplane models.

- Fokker Service Bulletin SBF28–32–164, dated January 14, 2015.
- Fokker Service Bulletin SBF100–32–166, dated January 14, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$3,100	$3,185	$25,480
Reporting	1 work-hour × $85 per hour = $85	0	85	680

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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):

2016–20–07 Fokker Services B.V.: Amendment 39–18673; Docket No. FAA–2016–6895; Directorate Identifier 2015–NM–068–AD.

(a) Effective Date

This AD is effective January 3, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model F28 Mark 0070 and Mark 0100 airplanes, all serial numbers (S/Ns).

(2) Model F28 Mark 1000, 2000, 3000, and 4000 airplanes, S/Ns 11003 through 11110 inclusive and S/N 11992, modified in service as specified in Fokker Service Bulletin SBF28–32–123; and S/Ns 11111 through 11241 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports indicating that the main landing gear (MLG) could not be extended and locked down during approach. We are issuing this AD to detect and correct any degraded or failed filter screens. This condition, if not corrected, could prevent MLG extension and lock-down and result in an emergency landing with consequent injury to occupants and damage to the airplane.

(f) Compliance

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

(g) Inspection

Within 18 months after the effective date of this AD, do a detailed inspection of the restrictor check valve filter screens to detect any degraded or failed filter screens including dents and missing wire, and install serviceable parts (hydraulic hose assemblies), in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–32–164, dated January 14, 2015 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–32–166, dated January 14, 2015 (for Model F28 Mark 0070 and 0100 airplanes); as applicable. Any affected hydraulic hose assembly must be replaced before further flight after the inspection.

(h) Serviceable Part

For the purpose of this AD, a serviceable part is a part number (P/N) 97867–1 or P/N 97867–3 hydraulic hose assembly (including the restrictor check valve) that has not previously been installed on an airplane, or a P/N 97867–1 or P/N 97867–3 hydraulic hose assembly (including the restrictor check valve) that has passed an inspection as specified in Fokker Services Component Service Bulletin CSB–32–026.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a replacement P/N 97867–1 or P/N 97867–3 hydraulic hose assembly on an airplane, unless the hydraulic hose assembly is a serviceable part as defined in paragraph (h) of this AD.

(j) Reporting Requirements

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of the results (including no findings) of the inspection required by paragraph (g) of this AD. Send the report to Fokker Services B.V., Technical Services, Service Engineering, P.O. Box 1357, 2130 EL Hoofddorp, The Netherlands, email *technicalservices@fokker.com.* The report must include the type of damage found and airplane flight cycles and also any no findings.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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 Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0077, dated May 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6895.

(m) 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.

(i) Fokker Service Bulletin SBF28–32–164, dated January 14, 2015.

(ii) Fokker Service Bulletin SBF100–32–166, dated January 14, 2015.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) 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.

(5) 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 September 15, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28341 Filed 11–28–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No.: FAA–2015–3597; Amdt. No. 187–36]

RIN 2120–AK53

Update of Overflight Fee Rates

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

ACTION: Final rule.

SUMMARY: This final rule updates existing overflight fee rates using Fiscal Year (FY) 2013 FAA cost accounting and air traffic activity data. Overflight fees are charges for aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Overflight fee rates were last updated in 2011. As a result, the FAA is not recovering the full cost of the services it provides. The FAA is increasing the rates for enroute and oceanic overflights based on Fiscal Year (FY) 2013 cost and air traffic activity data. The FAA is phasing in this rate increase over 3 years in equal percentage terms. This is a less burdensome approach than the alternative of phasing in the new rates in equal absolute terms, and is the same methodology used in the previous rulemaking. Finally, the FAA is making several organizational and clarifying revisions to the overflight fee requirements.

DATES: This rule is effective January 1, 2017.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Aleksandra Damsz, Financial Analyst, Office of Financial Analysis, AFA–400, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8055; email *aleksandra.damsz@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On August 28, 2015, the FAA published the notice of proposed rulemaking (NPRM), Update of Overflight Fee Rates (80 FR 52217). This rulemaking updates the existing overflight fees (last updated in a 2011

Final Rule) using more current FAA cost accounting and air traffic activity data.

The FAA is increasing the rates for enroute and oceanic overflights over three 12-month intervals to bring cost recovery from FY 2008 to FY 2013 recovery. The following table shows the increases:

TABLE 1—RATE INCREASES FOR ENROUTE AND OCEANIC OVERFLIGHTS

Revision date	Enroute rate (per 100 nautical miles)	Oceanic rate (per 100 nautical miles)
Current Rate	$56.86	$21.63
January 1, 2017 to January 1, 2018	58.45	23.15
January 1, 2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

Each fee rate will be effective for a 12-month period. However, the FAA will not make fee adjustments based on fiscal year or calendar year, but rather in 12-month intervals based on the effective date of this final rule.

The FAA received 74 comments to the NPRM. The Aircraft Owners and Pilots Association (AOPA) and 37 individuals (25 of whom were part of a form letter campaign) raised the issue that the $250 overflight fee billing threshold has not been raised while the fee rate has been raised. As a result, flights that were not getting billed in previous years because they were below the $250 threshold amount are now receiving a bill. Based on the comments received and subsequent analysis, the FAA is increasing the overflight fee billing threshold from $250 to $400.

The FAA also finalizes several organizational and content revisions to part 187 to clarify the overflight fees requirements.

Summary of Costs and Benefits of the Final Rule

The higher overflight rates based on FY 2013 unit costs will allow the FAA to move closer to full cost recovery of air traffic control services already being provided to operators. The present value of the fee increases through the third 12-month interval—when the full increase in rates will have taken place—is $9,560,692 for foreign operators and $141,888 for domestic operators. The increased fees provide greater incentives for foreign and domestic operators to economize on U.S. air traffic control facilities and U.S.-controlled airspace, thus increasing the efficient allocation of resources.

II. Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Chapter 453, Section 45301, *et seq.* Under that Chapter, the FAA is charged with prescribing regulations for the collection of fees for air traffic control and related services provided to aircraft, other than military and civilian aircraft of the United States Government or a foreign government, that transit U.S.-controlled airspace, but neither take off from nor land in the United States (''overflights''). This final rule is within the scope of that authority.

III. Background

A. History of Overflight Fees

The FAA's overflight fees were initially authorized in section 273 of the Federal Aviation Reauthorization Act of 1996. After a series of legal challenges and refinements, overflight fee rates were implemented in their current form in 2001. Since that time the fee rates have been based on cost data from the FAA's Cost Accounting System and air traffic data from the FAA's Traffic Flow Management System (TFMS). They were last updated in 2011. The 2011 final rule updated the existing rates by using cost and activity data for FY 2008. Because the rates had not been updated for 9 years, and the total enroute and oceanic rate increases were significant, the FAA decided to phase in the increases. The 2011 final rule phased in the increases over a 4-year period, with rate increases occurring on October 1 of 2011, 2012, 2013, and 2014. Thus, on October 1, 2014, the FAA was recovering the amounts that would have produced full cost recovery in FY 2008.

B. Aviation Rulemaking Committee

The FAA established and chartered an Overflight Fees Aviation Rulemaking Committee (ARC) consisting of foreign air carriers (and trade associations of those carriers) that are subject to the FAA's overflight fees. The ARC was chartered on May 1, 2013, with the task to provide the FAA a report detailing recommendations for tasks moving forward with the process of updating the overflight fee rates.

The ARC met with the FAA on June 12, 2013, and on January 23, 2014. On February 14, 2014, the ARC submitted several recommendations on future overflight rate updates. For a full discussion of the ARC's recommendations and FAA's responses, see the NPRM published at 80 FR 52218–52219.

IV. Discussion of the Final Rule

The FAA received 74 comments to the FAA's notice of proposed rulemaking to update the fee rates. Sixty-eight comments were received from individuals. Of the 68 individual comments received, there were 25 commenters who commented as part of a form letter campaign that focused on the interests of general aviation pilots flying from the U.S. to the Caribbean who make one or more intermediate stops enroute due to the aircraft's limited range or human physiological needs.[1] The FAA also received comments from three carriers and three associations: Carriers included British Airways, Lufthansa Airlines and Air Canada, and associations included National Airlines Council of Canada (NACC), International Air Transport Association (IATA) and Aircraft Owners and Pilots Association (AOPA).

Commenters raised a total of 17 issues. These issues, as well as FAA's responses, are discussed below.

A. Overflight Fee Billing Threshold

AOPA and 37 individuals (25 of whom were part of the form letter campaign) raised the issue that the $250 overflight fee billing threshold should be raised. Their concern was that while the overflight fee rate has increased, the billing threshold has not increased. As a result, flights that were not being billed in previous years because they

[1] The flight leg between the intermediate fuel or rest stop outside of the United States and the destination outside of the United States qualifies as an overflight generating a fee where the flight leg transits U.S.-controlled airspace.

were below the threshold are now receiving a bill. Commenters also asked that the threshold be increased to $450 and that the amendment should provide for automatic adjustments to correspond with future increases in overflight fees rates.

FAA concurs that the overflight fee billing threshold should be increased. In consideration of the comments, the FAA has analyzed the minimum threshold for overflight billings and has decided to increase this minimum threshold from $250 to $400 as part of this rulemaking.

Overflight fee rates (per 100 nautical miles) in the August 2001 final rule were $33.72 for enroute and $18.94 for oceanic and the rule included a minimum billing threshold of $250. The NPRM proposed the following rates over a 3 year period:

TABLE 2—PROPOSED ENROUTE AND OCEANIC FEE RATES

Revision date	Enroute rate (per 100 nm)	Oceanic rate (per 100 nm)
Current Rate	$56.86	$21.63
October 1, 2015	58.45	23.15
October 1, 2016	60.07	24.77
October 1, 2017	61.75	26.51

This final rule adopts the rates as proposed. The rates under this final rule are 83% higher for enroute and 40% higher for oceanic as compared with the rates in the 2001 final rule ($33.72 for enroute and $18.94 for oceanic). The minimum billing threshold of $250 has been updated to account for the percentage growth in the fee rates, resulting in a threshold of $457.81 for enroute and $349.92 for oceanic. A weighted average of the two rates is then calculated using actual FY 2014 enroute and oceanic miles to calculate the updated billing threshold of $400.

B. Excluding General Aviation

AOPA and 67 individuals (25 of whom were part of a form letter campaign) commented that U.S. general aviation should be exempt from paying overflight fees. These commenters stated that Congress did not intend to impose overflight fees on general aviation when it granted FAA authority to establish overflight fees.

Commenters also stated that charging general aviation traffic does little to recover air traffic control costs and general aviation traffic should not be burdened with overflight fees since they are an existing active consumer of fuel and other taxes which fund FAA and aviation services.

Further, commenters stated their view that because the FAA excluded enroute Guam and San Juan costs from total costs in the NPRM, that FAA therefore acknowledged that these fees should not apply to U.S. general aviation traffic.

The FAA notes that Congress did not differentiate between general aviation and commercial aviation in the overflight fees statute. Title 49 U.S.C. 45301 (a) states that ''[t]he Administrator shall establish a schedule of new fees, and a collection process for such fees, for . . . [a]ir traffic control and related services provided to aircraft other than military and civilian aircraft of the United States government or of a foreign government that neither take off from, nor land in, the United States.'' Similarly, under the FAA's Fee Regulation, 14 CFR part 187, App. B, any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States must pay a fee for the FAA's rendering or providing certain services, including but not limited to the following: Air traffic management; communications; navigation; radar surveillance, including separation services; flight information services; procedural control; and emergency services and training.

Consistent with the statutory and regulatory requirements, the FAA is required to collect overflight fees from any person who transits US airspace and neither takes off or lands in the United States. Neither the statute nor the regulation permit the FAA to exclude general aviation operators or to consider whether one aviation user group utilizes air traffic control services more than another. Additionally, there is no statutory or regulatory exception to the overflight fee requirement when persons covered by the requirement pay fuel or other related aviation taxes.

With regard to enroute Guam and San Juan costs and miles being excluded, the FAA has determined that the NPRM incorrectly stated that the combined enroute Guam and San Juan control facilities ''may handle a mix of general and commercial aviation traffic.'' The FAA had intended to state that these control facilities ''may handle a mix of terminal and enroute aviation traffic.'' This correction does not impact the underlying analysis.

Overflight fees are assessed on all traffic types with the exceptions noted in the August 28, 2015 NPRM, which stated that ''The FAA's costs used for this fee calculation are total costs because the services provided benefit all system users, including overflight users''. 80 FR at 52218. While combined control facilities may handle a mix of Terminal and Enroute aviation traffic, this is not an issue because 49 U.S.C. 45301, as noted above, does not distinguish or exempt general aviation users from the fees.

C. General Aviation Charged for Same Day Fuel Stops

AOPA and 32 individuals (25 of whom were part of a form letter campaign) stated that the FAA's proposal would impose overflight fees on U.S. registered general aviation operations that land in or depart from the United States but also make intermediate stops enroute due to the aircraft's limited range or human physiological needs. AOPA provided an example as follows:

> [A]n aircraft departs from an airport in Florida destined for the Dominican Republic in the Caribbean, but stops enroute at Nassau to refuel before continuing on to the Dominican Republic that same day. While overflight fees will not be assessed for the first leg of the flight between Florida and the fuel stop in Nassau, overflight fees under the NPRM will be assessed for the second leg of the flight between the fuel stop and the Dominican Republic. In comparison, a non-stop flight between Florida and the Dominican Republic would not result in any overflight fees.

The commenters also noted that when general aviation is charged for same-day fuel stops, a significant amount of time is wasted in working with the FAA to get these charges reversed.

The FAA emphasizes that overflight fees are assessed based on an evaluation of each flight. During the evaluation process, each flight is reviewed to consider whether an intermediate stop for fuel has occurred. A flight is not considered to be an overflight (*i.e.,* triggering an overflight fee) if it departs or lands in the United States and the FAA can determine that an intermediate

stop for fuel occurred. In that case, no fee is assessed. The amount of time on the ground at an intermediary location is considered when making the determination.

D. Compromising Safety

AOPA and 6 individuals stated that by failing to recognize the limitations of most general aviation aircraft, the proposed rule may encourage non-stop flights to or from U.S. airports in order to avoid overflight fees, even though an intermediate fuel stop would increase the safety of the operation or is otherwise physiologically necessary. Commenters argued that this is not in the best interest of safety. One commenter stated that to avoid the fees ''[t]he pilots will not use air traffic services. They will not travel, or travel unsafely, perhaps to the point of turning off transponders. And with this will cause preventable accidents.''

As previously stated, overflight fees are assessed based on an evaluation of each flight. A flight is not considered to be an overflight if it departs or lands in the United States. This can include intermediate stops for fuel.

Additionally, as discussed previously, the FAA is raising the minimum billing threshold from $250 to $400 as part of this rulemaking action. This will provide for air traffic control services in many instances without the pilot necessarily incurring any cost.

Discussion of turning off transponders is an unlikely scenario and an unnecessary action. Use of a transponder in and of itself will not generate user fees. User fees are based on the filing of a flight plan and receiving air traffic control services such as flight following or instrument flight rules separation services. A discrete transponder code would also need to be assigned to the aircraft. One could continue to use the transponder without incurring any cost, such as squawking 1200, indicating a Visual Flight Rules (VFR) operation without necessarily receiving air traffic control services.

A desire to reduce or minimize the dollar cost associated with any flight does not alleviate a pilot from the duties and responsibilities associated with acting as pilot in command. The pilot in command is the final authority and ultimately responsible for the operational safety of that flight. Pilots avoiding necessary fuel stops and/or turning off transponders to avoid air traffic control services and fees will likely jeopardize the safety of that flight and create unnecessary risk. The overflight fee must be considered part of the planning and associated cost of any flight, where a pilot does not take off or land from an airport located in the United States. Again, intermediate fuel stops that are of a short duration can be considered part of an overall flight that originates or departs from a United States location.

E. Cost Recovery Rate Increase

In the NPRM, the FAA asked for comments on whether it should expedite the increase of overflight fee rates to achieve full cost recovery. IATA, NACC, Lufthansa, Air Canada and British Airways opposed an expedited increase to enable cost recovery and suggested that the overflight fee rates be frozen at their present level until the ARC is re-convened and a new proposal for the rate increases is discussed and agreed upon. Air Canada noted that the Air Transport Agreement between Canada and the United States states that user charges must be ''just, reasonable, and not unjustly discriminatory.''

The FAA has reviewed the feedback on expediting the increase in overflight fee rates for cost recovery and has decided to proceed with the rate increases proposed in the NPRM without expediting them. Congress has directed the FAA to establish and maintain overflight fees ''reasonably related to the Administration's costs.'' To retain the cost-based relationship, that means the FAA must periodically review and revise its overflight fee rates, and that is why the FAA is now proceeding to the final rule to impose the fee rates proposed in the NPRM. The FAA believes that fees ''reasonably related to the Administration's costs'' would necessarily be ''just, reasonable, and not unjustly discriminatory,'' under the Transport Agreement. In addition, the overflight fees are not unjustly discriminatory because they are assessed only on aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Both foreign and domestic operators are charged in the same manner. Those aircraft that do not transit U.S.-controlled airspace pay no fee.

F. Marginal Allocation

Lufthansa, Air Canada, and IATA commented on the issue of the cost base used for the fee calculation and stated two concerns:

The first comment on marginal cost allocation stated generally is that costs for services neither used nor required by overflights should be removed from the cost base. The commenters also expressed concern that the level of overflight fees goes beyond that which is reasonably related to costs for providing air traffic control and related services to these operations. Commenters pointed out that the ARC noted that the amount recovered for non-overflight [2] services has remained unchanged, while overflight fees have continued to rise at a steady pace over the same period. IATA stated that insufficient data has been provided to justify FAA's claim that under the ARC proposal, ''the FAA would have recovered slightly less than 60% for enroute and 50% for oceanic of the total increase between FY 2015 rates (based on FY 2008 costs) and rates using FY 2013 data.''

Second, these commenters asserted that it is difficult to allocate overhead costs in a fair and justifiable manner to the air navigation cost base, specifically to the cost base of overflight charges. They asserted that this is because, contrary to most other air navigation service providers around the world, the FAA does not exclusively provide air traffic control services and hence, according to Air Canada, there is a fundamental problem with the FAA's ''organizational structure and complexity and the size of the overhead cost.''

The FAA notes the cost base concerns raised by Lufthansa, Air Canada, and IATA are not accurate. The methodology for estimating the fee is the same one used in the FY 2011 Final Rule to which the ARC had agreed.

Since the original issuance of the Final Rule relating to overflight fees in August 2001, the statutory standard for the fees was relaxed by Congress to provide that the fees need to be ''reasonably related'' to costs. This is in contrast to the previous standard in effect at the time of the issuance of the original Interim Final Rule in August 2000. That standard provided that the fees needed to be ''directly'' related to the FAA's costs of providing the air traffic control and related services.

The FAA continues to use the same methodology for calculating the fee rates as was used in the 2011 update. The overflight fee rate is calculated by dividing total ATO costs by the total flight miles. The rate calculation methodology is used separately for both enroute and oceanic cost and mile data to derive the overflight fee rate for enroute and oceanic. ATO costs and flight miles used in this calculation are system totals and not related only to overflights. Therefore, there is no need to exclude any costs from the cost base.

[2] ''Non-overflight services'' refers to services provided by the FAA to aircraft that do land in or takeoff from the United States, and operate in U.S. airspace under the direction of the FAA.

The FAA and ARC proposals are both based on FY 13 actual rates. The difference in methodology is that the FAA proposed a 3 year compounded annual growth rate (CAGR) phased-in over 3 years. The ARC proposal is based on a 5 year CAGR that only includes 3 years of phase-in. After year 3 the ARC recommended that a new ARC be re-convened to determine the need for updates after that period. Under the ARC's proposal therefore, the FAA would recover less than the FY13 levels.

In response to IATA's statement that the FAA has not provided the data to support its claim that ''the FAA would have recovered slightly less than 60% for enroute and 50% for oceanic of the total increase between FY 2015 rates (based on FY 2008 costs) and rates using FY 2013 data,'' the FAA provides the following details (per 100 nautical miles):

TABLE 3—COST RECOVERY COMPARISON

	Enroute	Oceanic
FAA Rate—FY 2008 Cost Recovery	$56.86	$21.63
FAA Rate—FY 2013 Cost Recovery	61.75	26.51
FAA Increase	4.89	4.88
ARC Final Proposed Rate	59.75	24.09
ARC Increase	2.89	2.46
ARC Proposed Increase as % of FAA Increase	60%	50%

Inclusion of overhead is a commonly accepted practice in fee setting, is consistent with generally accepted accounting principles, and is a specifically allowable element of cost under Office of Management and Budget (OMB) Circular No. A–25 on User Charges as well as International Civil Aviation Organization's (ICAO'S) Policies on Charges for Airports and Air Navigation Services. In addition, the same Act of Congress that changed the above fee setting standard from ''directly'' to ''reasonably related'' also gave the Administrator sole and final discretion in the determination of FAA costs. 49 U.S.C. 45301(b)(1). Again, the methodology used for determining overhead also remains unchanged from the FY2011 Final Rule and is based on FAA's Cost Accounting System.

G. FAA Costs

Lufthansa, Air Canada, NACC and IATA commented on the issue of increasing FAA costs. They expressed concern over the steady pace at which FAA operational costs continue to rise and their impact on overflight fees. Industry partners are expected to embark on cost control and cost reduction efforts and the FAA is urged to commit to a cost efficiency target that remains below inflation. Also, IATA expressed disagreement with the NPRM stating that the FAA ''believes forecasting based on projected traffic is more appropriate than using arbitrary cost targets'' and stated that it has found that unanticipated and untimely economic occurrences can significantly impact forecast-based traffic projections, resulting in inaccurate accounting of traffic demand, business plans, required resources, and funding streams. As an example, over the past several years, the FAA forecast has consistently overestimated the growth projections for operations in the National Airspace System. Lufthansa suggested freezing the overflight fee rates at their current level and ''reconsider the whole question of overflight fees.''

The issue of FAA's operational costs, and the rate at which they may increase, is outside the scope of this rulemaking. Under the statutory requirement, overflight fees must be ''reasonably related to the Administration's costs, as determined by the Administrator, of providing the services rendered.'' 49 U.S.C. 45301(b)(1). Neither the FAA traffic forecast nor cost targets are used in the fee calculation, but rather fees are calculated based on actual cost and miles.

H. Overflight Fee Calculation Cost Base

Lufthansa, IATA and Air Canada commented on the cost base used for the overflight fee rate calculation. Lufthansa and Air Canada both asserted that Air Route Traffic Control Center's (ARTCC's) have staff dedicated to manage, organize and optimize traffic approaching major airports in metropolitan areas. These working positions and all associated costs are included in the cost base for enroute, as the traffic concerned is still hundreds of miles away from the respective TRACON. As part of the enroute cost base, the costs are partly paid for by overflight fees. However, according to the commenters, overflying traffic does not require those services and hence, these costs should be excluded from the cost base used for the rate calculation. IATA also reiterated that the ARC recommended that the costs for services not used by overflights (*e.g.,* flow control into major airports and approach services at airports and airfields not served by a TRACON) be removed from the cost base.

Lufthansa also commented that it is unacceptable for the FAA to simply qualify services as ''de minimis'' without providing any details and justification. According to Lufthansa, ''[t]he NPRM on overflight fees is about facts and data and transparency of these. The term[] ''de minimis'' is a qualification, but not a quantification, and is not appropriate or acceptable in this context.''

The FAA does not agree that costs relating to flow control should be removed from the enroute cost base. The Traffic Management Unit personnel at the enroute centers are responsible for the safe and efficient flow of all traffic, including overflights, in their airspace, and it would be neither reasonable nor practicable for the FAA to attempt to sort out and exclude the portion of such costs solely attributed to overflights.

Moreover, air traffic flow management is a specifically allowable item for cost recovery under ICAO's Policies on Charges for Airports and Air Navigation Services (ICAO Document 9082).

While it is true that there are low activity airports and airfields that are not served by a TRACON or an air traffic control tower, and that in these instances the air traffic control services are provided by enroute controllers, the level of such activity is sufficiently low that it does not require increased staffing. See 76 FR 43114–43115 (July 20, 2011).

I. Failed ARC Process

British Airways, Air Canada, Lufthansa, IATA and NACC expressed disappointment that the FAA has chosen to dismiss the ARC's recommendations and stated that they viewed the ARC process as failed. They stated concern that the FAA's proposed rule included several new methodologies for which there had not

been any consultation with industry and for which prior indication and relevant information required to accurately determine the cost-based charges had not been provided. Had any prior indication or concerns been raised, these ARC members stated that they could have provided guidance to the Agency. Additionally, these ARC members stated that the FAA released its NPRM one month prior to the current rate expiration date, leaving no time for the ARC members to react to it and develop an alternative that could be supported by all parties.

Under the ARC's May 1, 2013 Charter, the objective of the ARC was to provide ''advice and recommendations on the appropriate amounts for future overflight fees.'' However, the FAA has no obligation to accept the advice and recommendations; it takes the ARC's report under advisement. The agency also is not required to coordinate with the ARC after the ARC has issued its report. In most cases, the ARC would be terminated after its business has concluded.

While the FAA considered the ARC's recommendations, it declined to implement the recommendations. Also, FY 2015 enroute and oceanic overflight fee rates do not have a set expiration date and remain in effect until notice of new rates is published and the new rates are effective. Consequently, the NPRM was not released one month prior to the expiration date of these fee rates.

J. ARC Data Transparency

Lufthansa, British Airways and IATA commented that the ARC was not provided with relevant information such as staffing levels, labor costs, actual and projected traffic growth, and efficiency measures, to be able to accurately determine the cost-based user fee. They stated that without this information it is impossible to accurately determine cost based charges.

The FAA does not concur that information relevant to overflight fees was kept from the ARC. The FAA provided detailed responses to ARC questions in 2013. Moreover, during the ARC meetings, the FAA provided the following relevant information to ARC members:

- Number of airports providing service for approach and departure services
- Difference between lower and higher level sectors
- IFR flights operating from these airports
- Inclusion and exclusion in cost allocation for enroute
- Stable and decreasing expenses from 2010 to 2013
- Specific FAA initiatives to improve efficiency
- Classification of flight miles for IFR and VFR traffic
- Detailed description and breakout of overhead costs, staffing levels, and capital expenditure
- Methodology for overflight fee calculation
- Results of sequestration on ATO costs
- Current rates and collection data for overflight fees
- Use of overflight fee collections
- Cost Accounting System cost of service documents
- Enroute and oceanic flight miles
- 2013 President's Budget (budget in effect when the ARC met)
- 2013 Senate Appropriations Bill
- Detailed summary of FAA budget breakdown
- Detailed summary specific to FAA operating budget
- Detailed summary specific to FAA capital programs
- Detailed summary specific to FAA NextGen programs
- Detailed summary specific to FAA NextGen Research, Engineering & Development
- Air Traffic Controller Workforce headcount, hires, and attrition
- System wide Traffic and Controller Trends

The data stated above as well as responses to the ARC's questions include the details to accurately determine cost based fee charges.

K. Guam and San Juan Costs and Miles Exclusion

Lufthansa noted FAA's proposal in the NPRM to exclude enroute Guam and San Juan costs from total FAA costs. Lufthansa noted that while it did not disagree with the exclusion in principle, it did not see in the NPRM how the exclusion would impact cost base, traffic, and fees. Lufthansa then questioned why this change and others in the NPRM had not been brought to the attention of the ARC.

The FAA response is as follows:

As an initial matter, the ARC concluded business on February 14, 2014, when it issued its recommendations. It was not until August 28, 2015, however, that FAA announced in the NPRM that it was proposing to exclude Guam and San Juan costs from total FAA costs. As a result, this change could not have been brought before the ARC, which was terminated 18 months prior to the time that the NPRM was issued.

Costs:

Guam and San Juan facilities are being excluded from the enroute costs to be consistent with Honolulu. This determination was made after reviewing the ARC recommendations. As a result, the FAA enroute costs have decreased.

Traffic Mileage:

The enroute miles associated with Honolulu and oceanic miles for Guam were double-counted when presented to the ARC as they are also counted as part of the Oakland oceanic airspace. It was determined that the mileage was to be removed for these facilities. As a result, the total flight miles (GCD-nm) for enroute and oceanic were lower.

Net Impact:

With the decrease in costs and flight miles for enroute, the per 100nm fee decreased. On the oceanic side, the costs remained un-changed while the flight miles decreased, resulting in an increased per 100 nm fee.

This change was not brought to the attention of the ARC before the publication of the NPRM because, at the time of the change, the FAA had already received the ARC's recommendations.

TABLE 4—IMPACT OF THE GUAM AND SAN JUAN CHANGE

	Prior to Guam and San Juan change	Post Guam and San Juan change
Enroute		
FAA Cost	$4,645,629,212	$4,597,808,058
Total Flight Miles (GCD-nm)	7,504,243,185	7,445,668,883
Rate Prior to Change (/100nm)	$61.91	$61.75
Oceanic		
FAA Cost	$184,391,603	$184,391,603

TABLE 4—IMPACT OF THE GUAM AND SAN JUAN CHANGE—Continued

	Prior to Guam and San Juan change	Post Guam and San Juan change
Total Flight Miles (GCD-nm)	708,610,831	695,620,413
Rate After Change (/100nm)	$26.02	$26.51

Enroute fees are $61.75 per 100 nautical miles (based on FY13 cost recovery) and oceanic fees are $26.51/100 nautical miles (based on FY13 cost recovery).

L. Weight-Based Fee Rates

Thirteen individuals stated that it is not fair that small planes are charged the same fee rate as large commercial planes. They suggested that a tiered rate be charged on only U.S.-registered aircraft with a not-to-exceed amount depending upon the aircraft total gross weight similar to landing fees at larger airports or that the rate be based on the number of seats on the plane.

The FAA does not concur that the fee rates should be charged based on weight or the number of seats on the aircraft. As noted above, the FAA is required to collect overflight fees from any person who transits US airspace and neither takes off or lands. 49 U.S.C. 45301(a); 14 CFR part 187, App. B. The statutory requirement is that the overflight fees be ''reasonably related to the Administration's costs, as determined by the Administrator, of providing the services rendered.'' 49 U.S.C. 45301(b). No distinction is made in the law between types of aircraft, aircraft weight, or number of seats. In addition, VFR aircraft utilizing flight following services are provided similar service as IFR traffic. They are both charged overflight fees.

M. General Aviation Excluded From the Aviation Rulemaking Committee

One individual stated that general aviation was not represented in the ARC, which was established to examine overflight fees and provide the FAA recommendations on future overflight fee rates.

The 2013 ARC inadvertently did not include representatives from general aviation because historically, members of this ARC and its predecessors were primarily composed of the parties from the extensive 1997–2003 overflight fees litigation—the Air Transport Association of Canada and seven international air carriers. Representatives from general aviation were not parties to the litigation. Membership of the 2013 ARC appears to have been an outgrowth of the 2008 overflight fees ARC, which appears to have been an outgrowth of the 2004 ARC on overflight fees. According to the August 26, 2009 ARC Report, ''[a]s part of the settlement with the litigating carriers, the FAA agreed to the creation of the ARC, which was to consist of FAA and industry representatives working to examine in depth the FAA's methodology for overflight fees and to recommend whether it should be modified.''

Despite the fact that general aviation was not represented on the ARC, general aviation was provided an opportunity to review and comment on the final rule. Twenty-five of the 74 comments that the FAA received in response to the NPRM were filed by advocates of general aviation. As noted above, the general aviation commenters raised the issue that the $250 overflight fee billing threshold had not been raised while the fee rate had been raised. As a result, flights that were not getting billed in previous years because they were below the $250 threshold amount were now receiving a bill. As noted, the FAA concurred with the general aviation commenters that billing threshold should be increased. In consideration of the comments, the FAA will be increasing the minimum threshold from $250 to $400 as part of this rulemaking.

N. General Aviation Visual Flight Rules

Lufthansa, Air Canada, NACC and IATA asked for further clarification on the timeline of VFR flights being included in the calculation of overflight fees. Additionally, three individuals stated that because VFR traffic neither requires nor receives the same level of service as IFR traffic, VFR traffic should be charged less or excluded from the overflight fees requirement.

VFR traffic utilizing flight following services are already included in the total mileage. Hence, there is no need for a timeline. In order to provide VFR flight following services, air traffic control generates a ''flight plan'' within FAA systems that is captured in the TFMS. This allows the aircraft call-sign (typically tail number for VFR flights) to be displayed and tracked against the discrete beacon code assigned by air traffic control. Non-discrete beacon codes (*e.g.,* 1200) are not provided by TFMS and therefore not captured in the overflights data. These VFR flights would not be assessed an overflight fee. This is consistent with the recommendation.

Air traffic control actively monitors and controls VFR flight following aircraft providing them with updates and guidance when necessary. VFR aircraft utilizing flight following are provided similar service as IFR traffic.

O. Great Circle Distance

Lufthansa, Air Canada, IATA and NACC commented on the use of great circle distance for calculating the nautical mile distance used in the overflight fee rate calculation. They stated that great circle distance was not part of the ARC agenda, nor was it discussed in terms of calculating overflight fees and stress the importance of ensuring the adoption of great circle distance be revenue neutral to the FAA. Further, they ask that a clearly defined GCD catalogue be published and consulted with airline users before it takes effect and that the FAA provide examples of same-route cost comparisons between great circle distance, as proposed, versus cost data (via the Cost Accounting System) and air traffic data (from TFMS).

The FAA has not changed the application of great circle distance within overflights. The great circle distance methodology is the same as used in the previous rulemaking (2011 Final Rule) with no change to the way the fees are generated. The formula in the rule was rewritten to enhance clarity and transparency concerning how the fees are assessed. Since the great circle distance use and methodology remains the same, FAA has determined there is not a need to consult with the airline users before taking effect (since it has already been in effect), nor is there a need for a great circle distance catalogue to be published.

P. Regulatory Costs on Small Entities

According to IATA, the NPRM indicates that there were 469 domestic operators (mostly small entities) that overflew U.S. controlled airspace in FY 2013. The NPRM provided assurances that the rulemaking would not have a significant economic impact on small entities (estimated at an average increase of $36.50 per operation). In its comments, IATA asked for further detail

as to the air traffic control services rendered to these domestic operators: ''how much they cost and (most importantly) who is covering those costs.'' IATA stated that its members should not be required to cover the costs incurred by these domestic operators.

The FAA concurs that IATA members are not and will not be assessed costs incurred by domestic operators. Any aircraft that overflies U.S. controlled airspace will be charged the same overflight fee, calculated based on systemwide cost and traffic, regardless if it is a domestic US or foreign operator. Regardless of the level of exception, which is applied to both domestic and foreign carriers, operator origin does not affect overflight fee billings.

Q. Meaning of $250 Billing Threshold Language

One individual commented that the NPRM's ''wording of Section 187.55(b) changes the wording in the current rules from a prohibition on the FAA sending an invoice when monthly fees are below the threshold to a statement that the FAA will send an invoice when monthly fees are above the threshold.'' The commenter further stated that, if strictly interpreted, this would allow the FAA ''to send invoices when fees are below the threshold at its discretion'' and would require invoices ''when fees are above the threshold.'' The commenter advised that this would be ''opposite to the original meaning,'' and recommended that ''the prohibition on below-threshold invoices should be restored as this appears unintentional. If intentional, the FAA has offered no justification for the change as would be required by the rulemaking process.''

The current regulatory provision addressing invoicing of overflight fees includes billing and states that the FAA will send an invoice to each user that is covered by this appendix when fees are owed to the FAA. If the FAA cannot identify the user, then an invoice will be sent to the registered owner. No invoice will be sent unless the monthly (based on Greenwich Mean Time) fees for service equal or exceed $250. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided. (14 CFR part 187, appendix B, paragraph (f)(1).)

Under this provision, if the overflight fee amount owed is less than $250, no invoice will be sent and no billing results. Overflight fees are only assessed when the invoice amount is $250 or more.

In the NPRM, FAA suggested regulatory text that would replace the language in appendix B relating to invoicing. (The NPRM proposed to remove and reserve appendix B). (80 FR 52217, 52224 (Aug. 28, 2015).)

The FAA does not agree that the change in wording would permit the agency to issue invoices for fees when the fee amount is below the $250 threshold. The FAA also does not agree with the comment that the change would be ''opposite to the original meaning.'' As adopted in this final rule, the proposed language in section 187.55 makes no substantive change. It does nothing different than the existing appendix B provision. In both cases, the FAA will send an invoice if fees are owed. In both cases, if the fees equal or exceed $400, as adjusted from $250 based on the comments received, the FAA will send an invoice. If the fees are less than $400, as adjusted from $250 based on the comments received, then the FAA will not send an invoice and no fees will be owed for the services rendered. As indicated in the NPRM, the FAA proposed this change and others as ''organizational changes to part 187 to clarify the overflight fee requirements.'' 80 FR 52220. The NPRM proposed no substantive changes to the current regulatory provision addressing invoicing of overflight fees found in appendix B, paragraph (f)(1). ''The proposed billing and payment procedures in new § 187.55 are unchanged from those in existing Appendix B.'' 80 FR 52220.

V. Summary of Regulatory Text Changes

The changes to the existing regulatory text made pursuant to this final rule generally reflect ''organizational changes to part 187 to clarify the overflight fee requirements.'' 80 FR 52220.

The FAA has revised the authority citation for part 187 to reflect current law.

In § 187.1, ''Scope,'' the FAA has removed the duplicate reference to Appendix A, removed the reference to Appendix B because Appendix B is being removed, and added a reference to Appendix C that inadvertently had not been added when Appendix C (computation of fees for production certification-related services performed outside the United States) was added.

The FAA has added a new § 187.3, ''Definitions,'' section to the rule, which revises four existing definitions from former Appendix B and adds a new definition for ''great circle distance'' consistent with the FAA's method used for calculating overflight fees.

The FAA has added a new § 187.51, ''Applicability of overflight fees,'' in which subparagraph (a) specifies who must pay an overflight fee. The FAA has added a new subparagraph (d) to address fees for flights through U.S.-controlled airspace covered by an FAA agreement or other binding arrangement. The FAA periodically enters into agreements with foreign states, regional groups of states, or foreign air navigation services providers to set the terms for the FAA's management or control of foreign airspace among other air navigation services provided by the FAA.

The FAA has added a new § 187.53, ''Calculation of overflight fees,'' which in subparagraph (a) retains the formula for calculating overflight fees from the former Appendix B but also clarifies the explanation of calculating that fee. Subparagraph (b) addresses how miles flown through each segment of airspace will be calculated, using great circle distance (GCD), from the point of entry into U.S.-controlled airspace to the point of exit from U.S.-controlled airspace. Subparagraph (c) includes a table providing the rate for each 100 nautical miles flown through enroute or oceanic airspace. Subparagraph (d) provides the mathematical formula for the total overflight fee. Subparagraph (e) states that the FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect current costs and volume of services provided.

In § 187.55, ''Overflight fees billing and payment procedures,'' are unchanged from those in former Appendix B.

VI. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects

of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

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

This rule will institute a 3-year phase-in of rate increases for oceanic and enroute overflights, with rates per 100 nautical miles increasing in three 12-month intervals to $23.15, $24.77, and $26.51 for oceanic flights, and to $58.45, $60.07, and $61.75 for enroute flights. The final rate of $26.51 for oceanic services, reached at the end of the third 12-month interval, is derived from the FAA's FY 2013 total cost of providing these services ($184,391,603) divided by the total nautical miles (695,620,413 nm) flown by operators (overflights and non-overflights) in oceanic airspace. An analogous calculation is made to obtain the third 12-month interval rate of $61.75 for enroute services ($4,597,808,058/7,445,668,883 nm). These higher rates based on FY 2013 unit costs will allow the FAA to move closer to full cost recovery of air traffic control services already being provided to operators.

Tables 5 and 6 show estimates of the increase in overflight fees for domestic operators and foreign operators for the three 12-month intervals, using FY 2013 overflight mileage totals, thus assuming no annual growth. As the tables show, the present value (at a 7 percent discount rate) in 2013 dollars of the projected fee increases through the third 12-month interval—when the full increase in rates will have taken place—is $141,888 for domestic operators and $9,560,692 for foreign operators. The updated fee rates will provide greater incentives for foreign and domestic operators to economize on U.S. air traffic control facilities and U.S.-controlled airspace, thus increasing the efficient allocation of resources.

TABLE 5—DOMESTIC OPERATORS—OVERFLIGHT FEES

Domestic Operators	Current	Year 1	Year 2	Year 3
Oceanic Fees (per 100 nm)	$21.63	$23.15	$24.77	$26.51
Oceanic Billings w/o Final Rule	528,616	528,616	528,616	528,616
Oceanic Billings w/Final Rule	528,616	565,707	605,400	647,878
Increase in Oceanic Billings	0	37,091	76,784	119,262
Enroute Fees (per 100 nm)	56.86	58.45	60.07	61.75
Enroute Billings w/o Final Rule	634,376	634,376	634,376	634,376
Enroute Billings w/Final Rule	634,376	652,064	670,245	688,933
Increase in Enroute Billings	0	17,688	35,869	54,557
Increase in Overflight Billings	0	54,779	112,653	173,819
PV Increase in Overflight Billings	0	51,195	98,395	141,888

TABLE 6—FOREIGN OPERATORS—OVERFLIGHT FEES

Foreign Operators	Current	Year 1	Year 2	Year 3
Oceanic Fees (per 100 nm)	$21.63	$23.15	$24.77	$26.51
Oceanic Billings w/o Final Rule	28,072,427	28,072,427	28,072,427	28,072,427
Oceanic Billings w/Final Rule	28,072,427	30,042,152	32,150,083	34,405,920
Increase in Oceanic Billings	0	1,969,724	4,077,656	6,333,493
Enroute Fees (per 100 nm)	56.86	58.45	60.07	61.75
Enroute Billings w/o Proposed Rule	62,543,288	62,543,288	62,543,288	62,543,288
Enroute Billings w/Proposed Rule	62,543,288	64,287,136	66,079,607	67,922,055
Increase in Enroute Billings	0	1,743,848	3,536,318	5,378,767
Increase in Overflight Billings	0	3,713,572	7,613,974	11,712,259
PV Increase in Overflight Billings	0	3,470,628	6,650,340	9,560,692

Notes: 1. Rates for overflights are per 100 nautical miles. 2. Fees are in U.S. dollars. 3. Values are discounted back to the effective date of the rule at a 7% discount rate.[3] 4. Fees are slightly overstated in that we do not account for the fact that under the old rule operators incurring a bill of less than $250 were not charged, and under the new rule operators incurring a bill of less than $400 will not be charged. Over the 3-year period, FY2013–FY2015, monthly fees of less than $250 were small, constituting between 0.3% and 0.4% of annual total fees, and monthly fees of between $250 and $400 were smaller, constituting between 0.2% and 0.3% of annual total fees.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, subsection (b)) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

[3] Office of Management and Budget, Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' October 29, 1992, p. 8.

regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

While the FAA did not receive comments on the regulatory flexibility analysis, the FAA did receive comments from 25 individuals and from AOPA, an industry group representing small entities. They commented that the overflight fees should not be applied to general aviation aircraft and that the fees went up but the $250 threshold was not changed. The FAA notes that Congress did not differentiate between general aviation and commercial aviation in the overflight fee statute. AOPA commented that with the fee increase users were now paying fees when they exceeded the $250 threshold. In response, the FAA has raised the threshold to $400 in this final rule.

We ranked in descending order all 469 domestic operators based on their overflight fees for fiscal year 2013 and found that the 14 top ranked operators accounted for more than 40% of that year's total domestic overflight fees. Of these 14 operators we identified 4 as small entities (using a size standard of 1,500 or fewer employees) and found all of them to have an increase in overflight fees as a percentage of annual revenues to be less than 1 percent.[4] [5] We believe this rule does not impose a significant economic impact on those small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. ICAO standards allow providers of navigation services to require users of these services to pay their share of the related costs. The FAA has determined that this rule primarily affects foreign commercial operators. The recovery of costs of providing air navigation services is consistent with ICAO standards and international practice. Foreign operators will be charged a fee only if they use U.S.-controlled airspace without taking off or landing in the U.S., and U.S. operators will be charged in the same manner. Accordingly, the FAA does not believe this rule will create an unnecessary obstacle to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million.

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this rule. The information used to track overflights (including the information collection necessary to implement this rule) can be accessed from flight plans filed with the FAA. The collection of information from the Domestic and International Flight Plans is approved under OMB information collection 2120–0026.

F. International Compatibility and Cooperation

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

The ICAO guidance document on aviation fees and charges, ICAO Document 9082 (Ninth Edition—2012), ICAO's Policies on Charges for Airports and Air Navigation Services, recommends consultations before imposing fees. In addition, Article 12 of the Air Transport Agreement between the United States of America and the European Union and its Member States (April 30, 2007, as amended June 24, 2010) encourages consultation.

By convening an ARC, presenting updated cost and traffic data to the ARC, and considering the ARC's recommendations, the FAA consulted with system users prior to proposing the overflight fee update. 80 FR 52217 (August 28, 2015). Additionally, the FAA invited comments on the proposal as part of its rulemaking process, which permitted participation by all interested parties.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the

[4] Employment and revenue data is from *www.Manta.com.*

[5] Since our overflight fees by operator include both enroute and oceanic overflights, we first calculate the weighted average percentage increase in fees from the final rule, which we find to be 14.95%. To assess the economic impact on any one U.S. operator, we then multiply the operator's 2013 operating fees by 14.95% to estimate the increase in that operator's fees as a result of the final rule. We then divide this estimate by the operator's annual revenue to assess the impact of the final rule on the operator.

categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

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

C. Executive Order 13609, Promoting International Regulatory Cooperation

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

VIII. Additional Information

A. Availability of Rulemaking Documents

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

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

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket, notice, or amendment number of this rulemaking.

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

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

The Amendment

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

PART 187—FEES

■ 1. Revise the authority citation for part 187 to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 106(l)(6), 40104–40105, 40109, 40113–40114, 44702, 45301.

■ 2. Revise § 187.1 to read as follows:

§ 187.1 Scope.

This part prescribes fees only for FAA services for which fees are not prescribed in other parts of this chapter or in 49 CFR part 7. The fees for services furnished in connection with making information available to the public are prescribed exclusively in 49 CFR part 7. Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix C to this part prescribes the methodology for computation of fees for production certification-related services performed outside the United States.

■ 3. Add § 187.3 to read as follows:

§ 187.3 Definitions.

For the purpose of this part:

Great circle distance means the shortest distance between two points on the surface of the Earth.

Overflight means a flight through U.S.-controlled airspace that does not include a landing in or takeoff from the United States.

Overflight through Enroute airspace means an overflight through U.S.-controlled airspace where primarily radar-based air traffic services are provided.

Overflight through Oceanic airspace means an overflight through U.S.-controlled airspace where primarily procedural air traffic services are provided.

U.S.-controlled airspace means all airspace over the territory of the United States, extending 12 nautical miles from the coastline of U.S. territory; any airspace delegated to the United States for U.S. control by other countries or under a regional air navigation agreement; or any international airspace, or airspace of undetermined sovereignty, for which the United States has accepted responsibility for providing air traffic control services.

■ 4. Add new §§ 187.51, 187.53, and 187.55 to read as follows:

§ 187.51 Applicability of overflight fees.

(a) Except as provided in paragraphs (c) or (d) of this section, any person who conducts an overflight through either Enroute or Oceanic airspace must pay a fee as calculated in § 187.53.

(b) *Services.* Persons covered by paragraph (a) of this section must pay a fee for the FAA's rendering or providing of certain services, including but not limited to the following:

(1) Air traffic management.
(2) Communications.
(3) Navigation.
(4) Radar surveillance, including separation services.
(5) Flight information services.
(6) Procedural control.
(7) Emergency services and training.

(c) The FAA does not assess a fee for any military or civilian overflight operated by the United States Government or by any foreign government.

(d) Fees for overflights through U.S.-controlled airspace covered by a written FAA agreement or other binding arrangement are charged according to the terms of that agreement or arrangement unless the terms are silent on fees.

§ 187.53 Calculation of overflight fees.

(a) The FAA assesses a total fee that is the sum of the Enroute and Oceanic calculated fees.

(1) *Enroute fee.* The Enroute fee is calculated by multiplying the Enroute rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Enroute airspace divided by 100 (because the Enroute rate is expressed per 100 nautical miles).

(2) *Oceanic fee.* The Oceanic fee is calculated by multiplying the Oceanic rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Oceanic airspace divided by 100 (because the Oceanic rate is expressed per 100 nautical miles).

(b) Distance flown through each segment of Enroute or Oceanic airspace is based on the great circle distance (GCD) from the point of entry into U.S.-controlled airspace to the point of exit from U.S.-controlled airspace based on FAA flight data. Where actual entry and exit points are not available, the FAA will use the best available flight data to calculate the entry and exit points.

(c) The rate for each 100 nautical miles flown through Enroute or Oceanic airspace is:

Time period	Enroute rate	Oceanic rate
January 1, 2017 to January 1, 2018	58.45	23.15
January 1,2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

(d) The formula for the total overflight fee is:

$$Rij = E*DEij/100 + O*DOij/100$$

Where:

Rij = the total fee charged to aircraft flying between entry point i and exit point j.

DEij = total distance flown through each segment of Enroute airspace between entry point i and exit point j.

DOij = total distance flown through each segment of Oceanic airspace between entry point i and exit point j.

E and O = the Enroute and Oceanic rates, respectively, set forth in paragraph (c) of this section.

(e) The FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect the current costs and volume of the services provided.

§ 187.55 Overflight fees billing and payment procedures.

(a) The FAA will send an invoice to each user when fees are owed to the FAA. If the FAA cannot identify the user, then an invoice will be sent to the registered owner. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided.

(b) The FAA will send an invoice if the monthly (based on Universal Coordinated Time) fees equal or exceed $400.

(c) Payment must be made by one of the methods described in § 187.15(d).

Appendix B to Part 187—[Removed and Reserved]

■ 5. Remove and reserve Appendix B to Part 187.

Issued under authority provided by 49 U.S.C. 106(f) and 45302, in Washington, DC, on November 7, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–28589 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 1005, and 1271

[Docket No. FDA–2016–N–1487]

RIN 0910–AH41

Submission of Food and Drug Administration Import Data in the Automated Commercial Environment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule/regulation to establish requirements for the electronic filing of entries of FDA-regulated products in the Automated Commercial Environment (ACE) or any other electronic data interchange (EDI) system authorized by the U.S. Customs and Border Protection Agency (CBP), in order for the filing to be processed by CBP and to help FDA in determining admissibility of that product. ACE is a commercial trade processing system operated by CBP that is designed to implement the International Trade Data System (ITDS), automate import and export processing, enhance border security, and foster U.S. economic security through lawful international trade and policy. FDA is a Partner Government Agency (PGA) for purposes of submission of import data in ACE. As of July 23, 2016, ACE became the sole EDI system authorized by CBP for entry of FDA-regulated articles into the United States. We also updated certain sections of FDA regulations related to imports. This rule will facilitate effective and efficient admissibility review by the Agency and protect public health by allowing FDA to focus its limited resources on those FDA-regulated products being imported or offered for import that may be associated with a greater public health risk.

DATES: This rule is effective December 29, 2016.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to the final rule:* Ann M. Metayer, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993–0002, 301–796–3324, *Ann.Metayer@fda.hhs.gov.*

With regard to the information collection: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St.,

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I. Executive Summary

A. Purpose of the Final Rule

The rule requires that certain data elements material to our import admissibility review be submitted in ACE or any other CBP-authorized EDI system, at the time of entry. This action will facilitate automated ''May Proceed'' determinations by us for low-risk FDA-regulated products which, in turn, will allow the Agency to focus our limited resources on products that may be associated with a greater public health risk. We also made technical revisions to certain sections of FDA regulations to make updates and provide clarifications.

B. Summary of the Major Provisions of the Final Rule

This rule adds subpart D to part 1 of 21 CFR chapter I (21 CFR part 1) to require that certain data elements be submitted in ACE or any other CBP-authorized EDI system, at the time of entry in order to facilitate admissibility review by the Agency of FDA-regulated products being imported or offered for import into the United States. Submission of these data elements in ACE will help us to more effectively and efficiently make admissibility determinations for FDA-regulated products by increasing the opportunity for automated review by FDA's Operational and Administrative System for Import Support (OASIS). We also added § 1.81 to the final rule to clarify that FDA may reject an import filing for failure to provide the complete and accurate information required in the rule.

We made technical revisions to certain sections of 21 CFR chapter I to update them. We revised 21 CFR 1.83 and 1005.2 to update the definition of owner or consignee in order to make that definition consistent with Title 19 of the U.S. Code. We also revised § 1.90 to allow FDA to provide notice of sampling directly to an owner or consignee. Additionally, we revised § 1.94 to clarify that written notice can be provided electronically by FDA to owners or consignees of FDA actions to refuse and/or subject certain products to administrative destruction. Under § 1.94, owners or consignees receive notice that FDA intends to take a certain action against an FDA-regulated product that is being imported or offered for import and the owner or consignee will have an opportunity to introduce testimony to the Agency in opposition to such action. We also amended 21 CFR 1271.420 to make clear that, unless otherwise exempt, importers of record of human cells, tissues or cellular or tissue-based products (HCT/Ps) that are regulated solely under section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264) and part 1271 (21 CFR part 1271) would be required to submit the applicable data elements included in this rule in ACE.

The final rule does not include certain aspects of the proposed rule that were opposed by many who submitted comments. For example, the final rule no longer includes FDA Value, FDA Quantity, Entity Contact Information other than for the importer of record, name and address of the ACE filer for tobacco products, and the Investigational New Drug Application Number for device-drug combination products as data elements that must be submitted in ACE at the time of entry. We have also removed, at our own initiative, the Drug Listing Number requirement for those human drugs that are regulated by FDA's Center for Biologics Evaluation and Research (CBER).

C. Legal Authority

The legal authority for this rule includes sections 536, 701, and 801 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360mm, 371, and 381, respectively), and sections 351, 361, and 368 of the PHS Act (42 U.S.C. 262, 264, and 271, respectively).

D. Costs and Benefits

The costs of complying with this regulation are between $27 million and $69 million per year (using 3 and 7 percent discount rates). The annualized cost savings to the entire industry cannot be fully quantified because of the lack of certain data currently available to the Agency. Partially quantifiable cost savings are estimated to range from $2.6 million to $43.4 million (using 3 and 7 percent discount rates).

II. Table of Abbreviations and Acronyms Commonly Used in This Document

Abbreviation/acronym	What it means
ACE	Automated Commercial Environment or any other CBP-authorized EDI system.
ACE filer	The person who is authorized to submit an electronic import entry for an FDA-regulated product in ACE.
ACS	Automated Commercial System—the predecessor CBP-authorized EDI system to ACE.
Agency	U.S. Food and Drug Administration.
CATAIR	Customs and Border Protection and Trade Automated Interface Requirements.
CBP	U.S. Customs and Border Protection Agency.
CBER	FDA Center for Biologics Evaluation and Research.
CDER	FDA Center for Drug Evaluation and Research.
CDRH	FDA Center for Devices and Radiological Health.
CTP	FDA Center for Tobacco Products.
CVM	FDA Center for Veterinary Medicine.
EDI	Electronic Data Interchange.
FDA	U.S. Food and Drug Administration.
FDASIA	Food and Drug Administration Safety and Innovation Act.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
HCT/P	Human cells, tissues, or cellular or tissue-based products.

Abbreviation/acronym	What it means
ITDS	International Trade Data System.
OASIS	FDA's Operational and Administrative System for Import Support.
PGA	Partner Government Agency in ACE.
PHS Act	Public Health Service Act.
We, Our, Us	U.S. Food and Drug Administration.

III. Background

In the **Federal Register** of July 1, 2016 (81 FR 43155), FDA proposed a rule to require that certain data elements material to our import admissibility review be submitted in ACE at the time of entry. We also proposed to make technical revisions to certain sections of FDA regulations to make updates and provide clarifications. Interested parties were given 60 days to submit comments on the proposed rule to the public docket.

We received 13 comment letters on the proposed rule by the close of the comment period, each containing one or more comments on one or more issues. These comments were submitted to the public docket by trade organizations, the trade industry, and the public. The final rule has been revised in response to comments received on the proposed rule. Our responses are discussed in section V. As discussed earlier in this document, we also decided, on our own initiative, to not include one required data element in the final rule. Additionally, the final rule includes several minor editorial revisions. Substantive changes from the proposed rule to the final rule are summarized in table 1.

TABLE 1—SUBSTANTIVE CHANGES FROM THE PROPOSED RULE TO THE FINAL RULE

21 CFR section in final rule	Description of change from proposed rule
1.71	Definitions. • Removed definition of ''combination product'' because Investigational New Drug Application Number (§ 1.76(h) in the proposed rule) removed. • Removed definition of ''import line'' because FDA Value (§ 1.72(a)(3) in the proposed rule) removed.
1.72	Data elements that must be submitted in ACE for articles regulated by FDA. • Removed FDA Value (§ 1.72(a)(3) in the proposed rule). • Removed FDA Quantity (§ 1.72(a)(4) in the proposed rule). • Removed Name, telephone, and email address of any one of the persons related to the importation of the product which may include the manufacturer, shipper, importer of record, or Deliver to Party (§ 1.72(b)(1) in the proposed rule). • Added submission of the full intended use code (§ 1.72(a)(3)); not in the proposed rule.
1.73	Food. • Removed requirement to submit FDA Value under § 1.72(a)(3) for food (§ 1.73(a) in the proposed rule). • Removed requirement to provide Food Canning Establishment Number and the Submission Identifier, and can dimensions or volume for low-acid canned foods and acidified foods imported or offered for import for laboratory analysis only, when such foods will not be taste tested or otherwise ingested
1.76	Medical Devices. • Removed requirement to submit Investigational New Drug Application Number (§ 1.76(h) in the proposed rule).
1.78	Biological products, HCT/Ps, and related drugs and medical devices. • Removed requirement to submit Drug Listing Number (removed from § 1.78(d) in the proposed rule).
1.79	Tobacco products. • Excludes products solely intended for further manufacturing and investigational tobacco products from requirement. Requires submission of a commercial name for any such tobacco product that does not have a specific brand name (§ 1.79(a) of the proposed rule). • Removed name and address of the ACE filer for any entry that includes an article that is a tobacco product (§ 1.79(b) of the proposed rule).
1.81	Rejection of Entry Filing. • Clarifies that FDA may reject an entry filing for failure to provide complete and accurate information as required in the final rule; not included in the proposed rule.

IV. Legal Authority

We have the legal authority under the FD&C Act and the PHS Act to regulate foods, cosmetics, drugs, biological products, medical devices, and tobacco products being imported or offered for import into the United States (sections 701 and 801 of the FD&C Act; section 351 of the PHS Act). We also have the legal authority to regulate the importation of radiation-emitting electronic products (section 536 of the FD&C Act).

Additionally, section 361 of the PHS Act authorizes FDA to make and enforce such regulations as it judges necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or from State to State. FDA has issued regulations in part 1271 to regulate HCT/Ps. HCT/Ps that do not meet the criteria listed in § 1271.10(a) for them to be regulated solely under section 361 of the PHS Act and the regulations in part 1271 are regulated as drugs, devices, and/or biological products under the FD&C Act and/or section 351 of the PHS Act and must follow applicable regulations, including the applicable regulations in part 1271. FDA has determined that improving the efficiency of admissibility determinations for HCT/Ps, thus improving the allocation of Agency resources, is necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries. We are therefore relying on the authority of section 361 of the PHS

Act in the amendments to § 1271.420. Authority for enforcement of section 361 of the PHS Act is provided by section 368 of the PHS Act.

We are also issuing this rule under authority granted to FDA by section 801(r) of the FD&C Act, added by section 713 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA). Title VII of FDASIA provides FDA with important new authorities to help the Agency better protect the integrity of the drug supply chain. Section 801(r) of the FD&C Act authorizes FDA to require, as a condition of granting admission to a drug imported or offered for import into the United States, that the importer of record electronically submit information demonstrating that the drug complies with the applicable requirements of the FD&C Act. This information may include:

- Information demonstrating the regulatory status of the drug, such as the new drug application, the abbreviated new drug application, investigational new drug, or drug master file number;
- facility information, such as proof of registration and the unique facility identifier; and
- any other information deemed necessary and appropriate by FDA to assess compliance of the article being offered for import.

Section 701(a) of the FD&C Act authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act, while section 701(b) of the FD&C Act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act. This rule is being jointly prescribed by FDA and the Department of the Treasury, with the exception of the provisions of the rule related to the importation of HCT/Ps which are regulated solely under section 361 of the PHS Act and part 1271 and the importation of radiation-emitting electronic products which are regulated under section 536 of the FD&C Act; neither of these provisions will be issued for the efficient enforcement of section 801 of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

Sections V.B and V.C contain summaries of the relevant portions of the responsive comments and the Agency's responses to those comments. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

The Agency also received a number of comments that were not responsive to the content of the proposed rule and therefore were not considered in its final development.

B. Description of General Comments and FDA Response

A number of comments made general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision. In the following paragraphs, we discuss and respond to such general comments.

(Comment 1) We received a comment expressing concern that several of the data elements in the proposed rule appear to require information that is already being provided in ACE pursuant to CBP requirements. We also received comments that many of the required data elements represent information that is already available to the Agency.

(Response 1) FDA acknowledges that some of the required data elements in this rule may appear similar to CBP data requirements in ACE. The rule, however, only contains those data elements that provide additional information that is material to FDA's initial admissibility review of an FDA-regulated article that is being imported or offered for import. Where information is already being collected by CBP and is acceptable for FDA admissibility review purposes, we did not include those data elements in the rule. For example, CBP collected FDA manufacturer and shipper, and ultimate consignee information in the Automated Commercial System (ACS), the predecessor CBP-authorized EDI system to ACE, to assist FDA in admissibility review of FDA-regulated products. We determined that the information CBP collects in ACE for manufacturer and shipper and Deliver to Party is sufficient for our purposes so we did not include those data elements in this rule.

We acknowledge that FDA may have access to some of the information which is required by the rule to be submitted by ACE filers at the time of entry. However, ACE filers and importers are in a better position to know the identity and characteristics of the particular article being imported or offered for import. For example, the importer should be aware of what Drug Listing Number is applicable to a particular drug article, what the applicable Food Canning Establishment Registration (FCE) number, Submission Identifier (SID), or can dimensions or volume are applicable to a particular low-acid canned food, or what the brand name is of a particular tobacco product.

In addition, submission of the required data elements in the final rule will assist FDA in expediting the initial screening and further review of an entry, and can significantly increase the likelihood that an entry line will receive an automated ''May Proceed.'' Historically, when these data fields are inaccurate or incomplete, these entries must be manually reviewed for an admissibility determination by FDA. Entries are delayed, sometimes significantly, while an FDA-reviewer either searches for that information in our data systems or requests followup documentation from the importer of record. An automated review to determine whether an article ''May Proceed'' is much faster and less resource intensive for both FDA and the importer.

(Comment 2) Several commenters requested that FDA make some or all of the required data elements in the proposed rule optional or, in the alternative, allow ACE filers to submit ''UNK'' representing ''unknown'' in ACE for those data elements. These commenters stated that the data elements are not always known or available to the ACE filer at the time entry is electronically filed in ACE. They expressed concern that CBP would not process the entry filing in ACE if all the required data elements are not submitted at time of entry. But, if the data is optional or if ''UNK'' is allowed to be submitted for a required data element, they asserted, CBP would process the entry and transmit the entry data to FDA's OASIS system. These commenters recognized that an FDA ''May Proceed'' would not issue until the missing data was provided by the ACE filer but that CBP may issue a delivery authorization to allow the goods to move from the port to the importer's premises in the interim. This would, they believe, avoid a backlog of cargo at the port and the cost of storage and demurrage as an ACE filer waited to receive the information from the importer.

(Response 2) As discussed in Response 6 in this document, we are requiring submission of intended use codes in ACE in the final rule but are allowing ACE filers to submit ''UNK'' as the intended use code in ACE at the time of entry. We decline, however, to accept ''UNK'' for any other required

data element in the final rule. As stated in the proposed rule, the number of import lines that include FDA-regulated articles continues to grow steadily every year and this is posing challenges to the Agency in enforcing sections 536 and 801 of the FD&C Act and sections 351, 361, and 368 of the PHS Act. The number of import lines in 2015 that included an FDA-regulated article exceeded 35 million. In ACS, where submission of data elements was optional, the number of submissions varied depending on commodity. As stated previously in this document, where certain data was missing or inaccurate, entries had to be manually reviewed for an admissibility determination by FDA and entries were sometimes significantly delayed. In the final rule, we are requiring only certain data elements that we have determined to be material to our import admissibility review be submitted in ACE at the time of entry. The purpose of the rule is to facilitate automated ''May Proceed'' determinations by us for low-risk FDA-regulated products which, in turn, will allow the Agency to focus our limited resources on products that may be associated with a greater public health risk. An automated review to determine whether an article ''May Proceed'' is much faster and less resource intensive for FDA and the importer than a manual review. As expected, we have seen a decrease in the FDA processing time for both automated and manual ''May Proceed'' determinations since ACE became the sole CBP-authorized EDI system in July 2016. The average time for the OASIS system to process an import entry submitted in ACS from August 27 to October 22, 2015, and issue an automated ''May Proceed'' determination was approximately 7.1 minutes which has been reduced to approximately 2 minutes in ACE from August 27 to October 22, 2016. The average time for an FDA-reviewer to manually review and issue a ''May Proceed'' determination in ACS from August 27 to October 22, 2015, was about 28 hours and that has been reduced to under 2 hours in ACE from August 27 to October 22, 2016. As a result of a more streamlined import process, the rule is expected to lead to a more effective use of FDA and importer resources, and more efficient enforcement of the FD&C Act and the PHS Act for imported products.

In addition, we expect that, after the initial adjustment phase, submission of the data elements required by the rule will become incorporated into the business practices of importers and customs brokers. Persons wishing to import FDA-regulated products into the United States are required to file the entry documentation or data required by CBP and FDA at the time of entry in ACE in order to secure the release of an FDA-regulated article from CBP custody (19 CFR 142.3). Entry and entry summary documentation that is filed electronically in ACE must be certified by the importer of record or his/her duly authorized customs broker as being true and correct to the best of his/her knowledge. A certified electronic transmission is binding in the same manner and to the same extent as a signed document (19 CFR 141.61(a)(2)).

Approximately 98 percent of importers use customs brokers to file their entries containing FDA-regulated products subject to the final rule. Customs brokers are required to exercise due diligence in preparing or assisting in the preparation of records for import entries (19 CFR 111.29). We expect that importers and customs brokers will adapt their business practices to provide the required data elements in ACE at the time of entry in order to secure the release of an FDA-regulated article from CBP custody and submission of these data elements will become routine.

(Comment 3) Some commenters requested that we use the term ''transmission of data elements in ACE'' instead of ''submission of data elements in ACE'' by ACE filers suggesting that FDA distinguish between the importer (as the provider of information) and the customs broker/filer (as the transmitter of the information provided by the importer). One comment suggested that we adopt the distinction between ''submitter'' and ''transmitter'' that appears in the Prior Notice of Imported Food regulation (21 CFR part 1, subpart I).

(Response 3) We decline to make that change. ''Submission'' is the term used in CBP regulations to characterize the electronic submission to ACE of the entry summary documentation or data for preliminary review or of entry documentation or data for other purposes (19 CFR 141.0a(c)). Further, as stated previously, approximately 98 percent of importers use customs brokers to file their entries containing FDA-regulated products subject to the rule; the other 2 percent file these entries themselves. The obligations of customs brokers extend beyond the mere electronic transmission of data received for transmission to CBP (see definition of ''customs business'' in 19 CFR 111.1).

It should also be noted that this rule does not address or impact the current import entry review process for food articles requiring prior notice which has been operationally transitioned from ACS to ACE. The prior notice information required under § 1.281 is currently submitted in ACE or the FDA Prior Notice System Interface (PNSI) before the arrival of a food article in the United States. The different roles of transmitter and submitter for prior notice are tied to the existence of two systems for filing prior notice and the particular roles of filers in that process. We do not see a benefit in applying those concepts to the process of filing entry for FDA-regulated products that are not subject to prior notice.

(Comment 4) Some commenters expressed doubts that submission of additional data in ACE for FDA-regulated products will result in increased efficiencies in FDA admissibility review particularly an increase in automated ''May Proceed'' determinations by the Agency.

(Response 4) Although we do not at this time have statistics on the numbers of automated ''May Proceed'' determinations that will result from implementation of the rule, we have already seen a substantial decrease in average FDA processing times for both automated and manual ''May Proceed'' determinations since ACE became the sole CBP-authorized EDI system in July 2016. As we and the trade industry continue to adjust to the new system and various technological issues with ACE that have arisen during the transition to ACE are addressed, we expect these processing times to continue to improve.

C. Specific Comments and FDA Response

For some of the proposed data elements and other requirements, FDA either did not receive comments or the comments were generally supportive. Unless otherwise noted, FDA has kept these requirements in the final rule for the reasons given in the proposal.

1. Approval or Clearance Status of FDA-Regulated Medical Products

In the Notice of Proposed Rulemaking, we invited comments on the advantages, disadvantages, and feasibility of requiring the submission of data elements related to the approval or clearance status of FDA-regulated medical products. We proposed to require the submission at the time of entry of application numbers for those articles that are the subject of such applications. In particular, we invited comment on whether the submission of these data elements would help us achieve our goals of facilitating admissibility review and focusing our

resources on those products that may be associated with a serious public health risk to consumers.

We received several comments supportive of our position and none of the comments suggested revising the provisions in the proposed rule related to the submission of application numbers. We are finalizing those provisions without change.

2. Active Pharmaceutical Ingredient Data Elements

We also invited comments on the advantages, disadvantages, and feasibility of requiring what are now optional active pharmaceutical ingredient (API) data elements for finished human and animal drugs contained in the PGA Message Set (*e.g.,* name of the API, the amount and unit of measure of the API, and the name of the manufacturer of the API in the finished drug) to be submitted in ACE at the time of entry.

(Comment 5) Several comments asserted that requiring submission of these API data elements in ACE at the time of filing entry would create a significant burden on industry. These commenters urged FDA to leave the API data elements as optional submissions in ACE, so that an ACE filer could choose to transmit the information if available at time of entry. The comments noted that by keeping the API data elements optional, CBP would be able to process the entry for a drug product, even if the API information were not transmitted in ACE at the time of entry. If, however, FDA determines further evaluation is necessary, FDA could then request API information during our review of the entry for admissibility.

(Response 5) In response to these comments, we have decided to keep the API data elements as optional submissions in ACE at the time of entry. Although these data elements will remain optional, FDA strongly encourages ACE filers to submit the API data elements at the time of entry to facilitate FDA's admissibility review. These API data elements provide us with information that may be material to our admissibility review for drug products. For example, submission of these API data elements would help FDA assess whether a finished dosage form drug that is being imported or offered for import appears to be adulterated and may be subject to refusal of admission under section 801(a) of the FD&C Act. If an API has not been manufactured in compliance with Current Good Manufacturing Practices (CGMP), it is deemed adulterated within the meaning of section 501(a)(2)(B) of the FD&C Act because the methods used in, or the facilities or controls used for, the drug's manufacture, processing, packing or holding did not conform to, or were not operated or administered in conformity with, CGMP requirements. A finished dosage form drug is deemed adulterated if it contains an API that is adulterated. Drugs that appear to be adulterated are subject to detention and refusal under section 801(a) of the FD&C Act. FDA has placed a number of foreign API suppliers on Import Alert 66–40, which may subject their APIs to detention without physical examination, because the firms have not met CGMPs. As a consequence, FDA has refused admission of drug products that have been manufactured using APIs on Import Alert 66–40, under section 801(a)(3) of the FD&C Act.

In addition, if a foreign-manufactured API was used in a drug product that is the subject of an approved application under section 505 or 512 of the FD&C Act (21 U.S.C. 355 or 360b), the API manufacturer must be an acceptable source listed in the approved NDA or ANDA for human drugs (*see, e.g.,* 21 CFR 314.50(d)(1)(i)) or in the approved NADA or ANADA for animal drugs (*see, e.g.,* 21 CFR 514.1(b)(5)(i)). Submitting the API data elements in ACE for a drug product that is the subject of an approved application would facilitate FDA's assessment of whether the finished dosage form drug complies with section 505 or 512.

If ACE filers submit the optional API data elements in ACE, it likely will increase the likelihood that the import entry will receive an automated ''May Proceed'' determination from the Agency. If the API data elements are not submitted in ACE, the entry may receive a manual review and the FDA reviewer may request that the importer provide API information for the finished dosage product.

3. Intended Use Code and Disclaimer

FDA invited comments on the advantages, disadvantages, and feasibility of the Agency requiring the submission of the following data elements in ACE at the time of entry: (1) An intended use code for the FDA-regulated article being imported or offered for import and (2) a disclaimer indicating that that the article is not currently regulated by FDA or that FDA does not currently have any requirements for submission of data for importation of that article per Agency guidance.

a. *Intended use code.* We received several comments supporting inclusion of intended use codes in the final rule. Historically, FDA derived intended use information for the purposes of FDA's admissibility review from the free text information submitted in the CBP-required product description field in ACS. Intended use codes were developed for ACE in the PGA message set to provide a consistent, systematic approach to collection of certain intended use information about articles that are being imported or offered for import into the United States. These codes standardize the data input for computer processing in ACE. If FDA needs a particular intended use code (IUC) for the ACE system to identify what FDA data elements are needed for a particular FDA-regulated product, the proposed IUC is submitted to CBP for inclusion in Appendix R to the Customs and Border Protection and Trade Automated Interface Requirements (CATAIR).

We added § 1.72(a)(3) to the final rule to require that a full IUC be submitted in ACE at the time of entry for each FDA-regulated article that is being imported or offered for import into the United States. Appendix R defines a full IUC as consisting of a base code that designates the general use intended for the article and a subcode, if applicable, that designates the specific use intended for the article.

(Comment 6) One commenter supported mandatory intended use codes and several commenters requested that IUCs be optional data submissions at the time of entry in ACE or, in the alternative, that FDA continue to allow ACE filers to submit ''UNK'' as the IUC in ACE at the time of entry. These commenters assert that the intended use of an article is often not known at the time of entry and that if FDA needs this information, it can be provided at a later date.

(Response 6) Because IUCs are such an integral part of the ACE system regarding the identification of those required data elements in the rule applicable to a particular article that must be submitted in ACE at the time of entry, we decline to make IUCs optional. After considering the comments, we have decided, however, to continue to allow submission of the intended use code ''UNK'' for FDA-regulated articles. ''UNK'' is currently listed as an IUC in Appendix R of the CATAIR. Operationally, submission of ''UNK'' will not trigger the ACE system to identify all of the FDA data elements that are required to be submitted for a particular FDA-regulated article whereas submission of the specific IUC applicable to that article will trigger the ACE system to identify the required data

fields and reject the filing if the required data is not submitted.

If ''UNK'' is submitted as the IUC for the article, the ACE filer is still responsible for submitting the other required data elements in this rule that are applicable to that article, in ACE at the time of entry. If those other data elements are not submitted in ACE at the time of entry, the entry may be transmitted by ACE to OASIS for FDA's admissibility review but FDA may decide to not perform an admissibility review until those data elements have been submitted. We have added § 1.81 to the final rule to make clear that FDA may reject any entry filing that does not contain the complete and accurate information required by the rule without performing an admissibility review. If FDA rejects an entry filing under § 1.81, the ACE filer will need to withdraw the entry in ACE and resubmit the entry with the complete and accurate information required under the rule in order to have FDA perform an admissibility review of that entry. ACE filers also need to be aware that submitting ''UNK'' as the intended use code will, in most cases, subject the entry to a manual review for admissibility provided the entry filing is not rejected by FDA.

b. *Disclaimer.* By submitting a disclaimer in ACE at the time of entry, an ACE filer indicates that the article being imported or offered for import is not currently regulated by FDA or that FDA does not currently have any requirements for submission of data for importation of that article per Agency guidance.

(Comment 7) Several commenters expressed the opinion that the current disclaimer procedures in ACE should not be changed.

(Response 7) After consideration of the comments received, we have decided not to include FDA-required disclaimer data elements in the final rule. ACE filers can continue to submit disclaimers in ACE at the time of entry following current procedures.

4. General Data Elements for FDA-Regulated Commodities

a. *FDA country of production.* The FDA Country of Production identifies the country where an FDA-regulated article last underwent any manufacturing or processing but only if such manufacturing or processing was of more than a minor, negligible, or insignificant nature. This differs from the CBP country of origin which uses a substantial transformation test. When an article has undergone a ''substantial transformation'' in a different country, CBP requires that the country of origin be changed to the country where the substantial transformation has taken place. Substantial transformation occurs in the country where the article acquired the name, character or intended use that matches the article identified in the entry.

CBP collected FDA Country of Production in ACS to assist FDA in making admissibility decisions for FDA-regulated products.

(Comment 8) Some commenters requested additional guidance on what FDA considers to be manufacturing or processing of more than a minor, negligible, or insignificant nature. One commenter suggested that FDA consider issuing a ''positive'' list of manufacturing activities or processes that definitively impart ''FDA Country of Production'' status or alternatively issue a list of manufacturing or processing activities that are considered by the Agency to be minor, negligible or insignificant.

(Response 8) Whether the manufacturing or processing of a particular FDA-regulated article is of more than a minor, negligible or insignificant nature is dependent on the facts of each particular case which include the specific manufacturing or processing activities involved as well as the type of commodity that is being affected by those activities. We have provided below some examples to illustrate activities FDA would consider to be more than minor, negligible, or insignificant which would impact the FDA Country of Production.

For example:

- If an FDA-regulated article undergoes further manufacturing/processing at a facility, such as encapsulating a drug, the country where the facility that performed the additional manufacturing/processing is located is considered to be the FDA Country of Production.
- Conversely if an article was not further manufactured/processed by a facility, such as repacking retail packages into a different master carton for shipping, the country where the facility that performed this repacking is located would not be considered to be the FDA Country of Production.

We will also consider the issuance of additional guidance in the future as resources allow.

(Comment 9) One comment requested clarification regarding the application of FDA Country of Production to Foreign Trade Zone (FTZ) operations. The Commenter suggested revising the FDA Country of Production data element by adding this sentence: ''For articles imported from foreign-trade zones, if the article has undergone manufacturing in the foreign-trade zone, the FDA Country of Production is the United States for FDA import purposes.''

(Response 9) FDA recognizes that the FDA Country of Production will be the United States if more than minimal, negligible, or insignificant manufacture or processing occurs in an FTZ but we decline to make the suggested revision because it is unnecessary.

b. *The complete FDA product code.* CBP also collected the Complete FDA Product Code in ACS to assist FDA in making admissibility decisions for FDA-regulated products.

(Comment 10) Some commenters supported the requirement for submission of the Complete FDA Product Code but requested clarification regarding the requirement that the code '' . . . must agree with the invoice description of the product. '' They expressed concern that ''agreement'' could be interpreted in various ways by both FDA-reviewers and industry resulting in unintended and unnecessary detentions or delays for completion of admissibility determinations. For example, ''agreement'' with the invoice description could be understood as requiring a partial or complete verbatim match between the invoice description and the product code.

(Response 10) FDA does not intend for the invoice description and the Complete FDA Product Code to be identical. In order to clarify this requirement, we have revised the language in the rule to require that the Complete FDA Product Code be ''consistent'' with the invoice description.

c. *FDA value.* We proposed to require that the total value of an entry as required by CBP or the total value of the article(s) in each import line be submitted at the time of entry in ACE and invited comments on the advantages, disadvantages, and feasibility of allowing the ACE filer to submit the total value of the entry or the total value apportioned to the article(s) in each import line. In particular, we invited comment on whether the submission by an ACE filer of the value apportioned to the article(s) in an import line in ACE at the time of entry would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

(Comment 11) We received several comments that expressed confusion over the products that would be subject to the proposed FDA Value requirement, as well as the ''value'' that was required to be submitted in ACE for an entry that

includes an FDA-regulated article. The commenters suggested that the Agency accept the total value of an entry required by CBP without the need to break-out the value of each import line. Pro-rating the value to each import line, they assert, can be a cumbersome, time intensive process with no practical value to FDA for typical entries containing FDA-regulated products which may have many separate lines.

(Response 11) FDA will accept the total value of an entry required by CBP and, therefore, we have decided not to finalize § 1.72(a)(3) in the proposed rule. ACE filers, however, will continue to have the option to submit the total value of the article(s) in each import line.

d. *FDA quantity.* FDA proposed to require submission of the quantity of the FDA-regulated article(s) in each import line at the time of entry in ACE. FDA Quantity would include the quantity of each layer/level of packaging of the article(s), the unit of measure which is the description of each type of package, and the volume and/or weight of each of the smallest of the packaging units. The quantity would be required to be submitted in decreasing size of packing unit (starting with the outermost/largest package to the innermost/smallest package). We invited comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the FDA quantity of the article(s) in each import line in ACE at the time of entry. In particular, we invited comment on whether the submission by an ACE filer of the FDA quantity of the article(s) in an import line would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

(Comment 12) We received several comments that this level of detail for quantity as an ''across-the-board'' data requirement would entail significant data input on the part of ACE filers and would not enhance admissibility review by FDA.

(Response 12) In response to the comments we received we have decided not to finalize § 1.72(a)(4) of the proposed rule which would have required FDA Quantity to be submitted in ACE at the time of entry. ACE filers, however, will still have the option of submitting this information.

e. *Entity contact information.* In the proposed rule, we proposed to require that the name, telephone, and email address of any one of the persons related to the importation of the article(s) in the entry, which may include the manufacturer, shipper, importer of record, or Deliver to Party, be submitted in ACE at the time of entry. We invited comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit the name, telephone, and email address of any one of the persons related to the importation of the article(s) in the entry, in ACE at the time of entry. In particular, we invited comment on whether the submission by an ACE filer of this information would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers.

(Comment 13) We received several comments opposing this provision in the proposed rule. One commenter expressed concern that the proposed entity contact information was unnecessarily duplicative of the contact information the Agency was proposing to require for the importer of record. In addition, the commenter suggested that the email and phone of the importer of record should only be required at the header level, not for each import line.

(Response 13) After review of the comments we have decided to require email address and phone for the importer of record only. The contact information for other parties to the shipment, which may expedite the entry review process, can be provided to the Agency at the option of the ACE filer.

However, FDA does not determine what information is submitted at the header level, CBP makes those determinations. In addition, the burden to input the same data repeatedly on the same entry may be ameliorated through software programming.

5. Food

Low-acid canned food. We proposed that the Food Canning Establishment (FCE) Number, the Submission Identifier (SID), and the can dimensions or volume (*e.g.,* pouches and bottles) be required submissions in ACE at the time of entry.

(Comment 14) One comment asked us to clarify whether the FCE number, SID, and can dimensions or volume information will be required for LACF products that are imported for research and testing at laboratories, but that are not sold or marketed in the United States and are not intended for consumption in the United States.

(Response 14) We do not believe we will generally need the FCE number, SID, and can dimensions or volume to effectively identify LACF products that are being imported or offered for import for laboratory analysis only, when such foods will not be consumed by humans or animals. Consequently, we have revised § 1.73(b). Under the final rule, § 1.73(b) provides that for an article of food that is a low-acid canned food, the ACE filer must transmit at the time of filing entry the FCE number, SID, and can dimensions or volume, except that the ACE filer does not need to submit this information if the LACF product is for laboratory analysis only and will not be taste tested or otherwise ingested. Because we also do not believe we will generally need this information to effectively identify acidified food products in similar circumstances, we have made similar revisions to § 1.73(c). Specifically, we have revised § 1.73(c) to provide that for an article of food that is an acidified food, the ACE filer must submit at the time of filing entry the FCE number, SID, and can dimensions or volume, except that the ACE filer does not need to submit this information if the acidified food product is for laboratory analysis only and will not be taste tested or otherwise ingested. We consider LACF and acidified food products to be for laboratory analysis only and not taste tested or otherwise ingested only if the entire article will be used completely in the laboratory analysis, destroyed by the laboratory analysis, or destroyed following a reasonable retention period after the laboratory analysis. No portions of the article can be taste tested or otherwise consumed by humans or animals. Consequently, if an LACF or acidified food product being imported or offered for import will be used for product promotional tasting or other types of research in which the food will be ingested, ACE filers are required to submit the FCE number, SID, and can dimensions or volume information in ACE at the time of entry. In order to allow ACE filers to identify in ACE any LACF or acidified foods that are for laboratory analysis which do not require submission of the FCE number, SID, and can dimension or volume, we intend to create an FDA product code that can be used to identify such foods. When ACE filers use this product code, they will not be required to submit the FCE number, SID, and can dimension or volume information in ACE at the time of entry. ACE filers should be aware that entries submitted in ACE that include this new product code will be subject to manual review for an admissibility determination by FDA.

6. Human Drugs

Drug registration number. We proposed to require the submission of the Drug Registration Number in ACE at the time of entry. For purposes of this rule, the Drug Registration Number that would be submitted in ACE is the

unique facility identifier (UFI) of the foreign establishment where the drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States.

(Comment 15) One commenter requested clarification regarding what number was required to be submitted for the Drug Registration Number.

(Response 15) We published a final rule on August 31, 2016, regarding the requirements for Drug Registration and Listing (81 FR 60170). FDA also provides guidance and instruction on establishment registration on our Web site (see, *e.g., http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/DrugRegistrationandListing/ucm078801.htm*)

7. Animal Drugs

One comment supported inclusion of all of the proposed data elements to be submitted in ACE for importation of animal drugs, noting that all clearly impact admissibility. We are finalizing these provisions without change.

8. Medical Devices

a. *Registration and Listing.* We proposed to require that the applicable Registration and Listing Numbers of the Domestic Manufacturer, Foreign Manufacturer, and/or Foreign Exporter for each medical device identified in the entry, be submitted in ACE at the time of entry.

(Comment 16) One commenter stated that if there are different medical device registrants involved in the same entry, for example a foreign manufacturer and a foreign exporter, only one medical device registration and listing number should be required and this would be sufficient for FDA to make an admissibility decision.

(Response 16) As explained in the preamble of the proposed rule, we have determined that the registration numbers of certain parties involved in the importation of a medical device (as well as the device listing number) may be material to our admissibility review. Submission of one party's registration number does not convey the registration information for another party involved in the importation of a medical device. Device foreign exporters can and do vary for medical devices manufactured at a particular firm and thus the information for all parties involved is needed at the time of entry. In addition, the time needed for an FDA reviewer to attempt to ascertain that information from our records or to request that information from the ACE filer or importer during a manual review can result in a lengthy delay in our admissibility determination. As such, we are not amending this requirement.

b. *Device listing number.* We proposed to require that the Device Listing Number (LST) required under section 510 of the FD&C Act (21 U.S.C. 360) and part 807 (21 CFR part 807) for each medical device identified in the entry, be submitted in ACE at the time of entry. Providing the LST will allow FDA to review important information during our initial admissibility review as the information for each listed medical device, as enumerated in § 807.25(g), includes the proprietary or brand name(s) under which each medical device is marketed and the activities or processes that are conducted on or done to the medical device at each establishment (*e.g.,* manufacturing, repacking, relabeling, developing specifications, remanufacturing, single-use device reprocessing, contract manufacturing, or contract sterilizing). When the listing process is complete, FDA issues an LST for each medical device associated with a particular registration.

(Comment 17) Some commenters, while recognizing that the LST is a critical component of our admissibility review, felt that the LST should be made publicly available by FDA to ensure that ACE filers have this information to submit in ACE at the time of entry. The commenters asserted that, if LSTs are not publicly available (and thus potentially not readily available to ACE filers), this will cause unnecessary disruptions and additional caged shipments. They suggest that an alternative to making the LST publicly available is to continue to allow ''UNK'' to be submitted for the LST.

(Response 17) We do not agree that FDA should make LSTs publicly available, and decline to make the requested revisions to the requirement to submit the LST (*i.e.,* permit the use of ''UNK'' instead of the LST).

As explained in the preamble to the proposed rule, in the device registration and listing process, FDA issues a registration number to the registrant that is publicly available and an LST for each device associated with the registration. Under section 510(f) of the FD&C Act, device listing information ''shall be exempt from such inspection unless the Secretary finds that such an exemption would be inconsistent with protection of the public health.'' Under § 807.37(b)(2), FDA-assigned LSTs are expressly excluded from public inspection or posting on the FDA Web site. In the **Federal Register**, FDA provided the following brief explanation for that exclusion: ''Listing numbers serve important governmental functions that may be harmed if they were made public'' (77 FR 45927 at 45930 (Aug. 2, 2012)).

The confidentiality of LSTs serves important public health interests and helps to prevent the importation of substandard, mislabeled, and counterfeit medical devices. Some imports, *e.g.,* counterfeit devices, may not be as safe and effective as devices approved or cleared for the U.S. market, may have been inadequately stored or maintained according to standards applicable outside the United States, or may be labeled or bear inadequate instructions for use in foreign markets. All of these issues can impact patient safety. FDA, therefore, will not be making LSTs publicly available as requested by commenters. Moreover, FDA will not be allowing ''UNK'' to be entered for LST as doing so would also increase the likelihood that counterfeit devices could enter the U.S. market and harm consumers. Although ''UNK'' cannot be used in lieu of an LST, ''UNK'' is an option for the intended use code.

ACE filers and importers in an established transactional or commercial relationship with the registrant will have access to the proprietary LST to submit in ACE at the time of entry.

c. *Investigational devices.* We proposed to require that an ACE filer submit in ACE at the time of entry, in the data field for the investigational device exemption (IDE) number in ACE, for an investigational device that is being imported or offered for import: (1) The IDE number for a medical device granted an exemption under section 520(g) of the FD&C Act (21 U.S.C. 360j(g)) or (2) ''NSR'' for a medical device to be used in a nonsignificant risk or in an exempt study (§ 1.76(b)).

One comment supportive of this provision in the proposed rule was received and we are finalizing this provision without change.

d. *Impact resistant lens.* We proposed to require for impact resistant lenses in eyeglasses and sunglasses an Affirmation of Compliance with the applicable requirements of § 801.410 (21 CFR 801.410) at the time of entry in ACE. This regulation states that importers may have the tests required by § 801.410(d) conducted in the country of origin but they must make the results of the testing available, upon request, to FDA, as soon as practicable (§ 801.410(g)). The current Affirmation of Compliance Code is ''IRC.''

(Comment 18) Two commenters requested that FDA clarify whether impact-resistant lenses imported for personal use require submission of the IRC Affirmation of Compliance Code at

the time of entry in ACE and whether an ACE filer must possess or submit the results of the ''drop fall'' test under § 801.410 in order to submit that Affirmation of Compliance when applicable.

(Response 18) For further relevant information on the importation of impact-resistant lenses for personal use, please see FDA's Supplemental Guide to the CATAIR (available at *https://www.cbp.gov/document/guidance/fda-supplemental-guide-release-16*), Chapter 9 of FDA's Regulatory Procedures Manual (available at *http://www.fda.gov/downloads/ICECI/ComplianceManuals/RegulatoryProceduresManual/UCM074300.pdf*), and FDA's Impact-Resistant Lenses: Questions and Answers Guidance (available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm070755.pdf*).

As in the past, an ACE filer submitting ''IRC'' in ACE at the time of entry may rely on a drop-fall test certificate from the manufacturer or from a third party confirming to the ACE filer that the import satisfies the applicable requirements of § 801.410.

e. *Investigational new drug application number.* Proposed § 1.76(h), as explained in section V.C.5.h of the preamble of the Proposed Rule, would require the ACE filer, in the case of a combination product consisting of at least one medical device and one drug intended for human use and subject to an investigational new drug application (IND), to submit in ACE at the time of entry the IND number if FDA has designated the Center for Devices and Radiological Health (CDRH) as the center with primary jurisdiction for the premarket review and regulation of the combination product.

(Comment 19) We received a comment asserting that a combination product consisting of at least one medical device and one investigational new drug where FDAs CDRH has been designated as the center with primary jurisdiction would rightfully be conducted under an IDE rather than an IND. The commenter expressed the opinion that the final rule should distinguish between a combination product approved under an IDE and a combination product approved under an IND.

The commenter also observed that the proposed rule only addressed the importation of stand-alone medical devices not associated with a combination product and not the importation of devices that are included in combination products. Although medical device components of combination products may be integrated directly with a drug or biologic (21 CFR 3.2(e)(1)) or co-packaged with a drug or biologic (21 CFR 3.2(e)(2)), the commenter stated, the proposed rule did not appear to discuss the importation of medical device components of drug- or biologic-primary mode of action combination products regulated by CDER or CBER and approved for marketing under a new drug application or a biologics license application.

(Response 19) In light of this comment and based on further FDA review, FDA is not finalizing proposed § 1.76(h). FDA believes that the other requirements in §§ 1.74, 1.76, and 1.78 of the final rule, regarding products subject to the various types of applications, including investigational use applications, will suffice for combination products. If warranted, FDA will provide additional information on submitting this information for imported combination products in future guidance or other published materials.

f. *Convenience kit.* We proposed to require that a medical device that is a convenience kit or part of a convenience kit and is a re-import of a medical device manufactured in the United States or is an import of a medical device manufactured outside the United States be identified as such in ACE at the time of entry using the current Affirmation of Compliance Code ''KIT.''

(Comment 20) One commenter was not sure that this data element will aid FDA in making admissibility decisions.

(Response 20) The purpose of the convenience kit data element is to facilitate our admissibility review of medical device products approved or cleared for marketing as a kit by FDA, and to identify convenience kits that include recalled or unapproved medical devices. As explained in the preamble to the proposed rule, convenience kits imported or offered for import have been found at times to contain recalled or unapproved medical devices.

9. Radiation-Emitting Electronic Products

We received no comments regarding this proposed provision, and we are finalizing it without change.

10. Biological Products, HCT/Ps, and Related Drugs and Medical Devices

HCT/P Registration Number and Affirmation of Compliance. Human cells, tissues, or cellular or tissue-based products are articles containing or consisting of human cells or tissues intended for implantation, transplantation, infusion or transfer into a human recipient (§ 1271.3(d)). For HCT/Ps manufactured by establishments required to register under part 1271 and regulated solely under section 361 of the PHS Act and the regulations in part 1271, we proposed to require the submission of that registration number in ACE at the time of entry. The current Affirmation of Compliance Code for the HCT/P Registration Number is ''HRN''.

We also proposed to require for HCT/Ps regulated solely under section 361 of the PHS Act and the regulations in part 1271 being imported or offered for import that are not otherwise exempt, that an Affirmation of Compliance with all applicable requirements of part 1271 be submitted in ACE at the time of entry. The current Affirmation of Compliance Code for HCT/Ps to affirm compliance with part 1271 is ''HCT''.

(Comment 21) One comment agreed with most of the proposed requirements specific to biological products, HCT/Ps, and related drugs and medical devices, because the data clearly impacts admissibility. However, the comment questioned the need for the submission of HCT/P registration number and Affirmation of Compliance, and expressed a belief that this information is not applicable to admissibility.

(Response 21) We acknowledge and appreciate the supportive comments. We disagree that the HCT/P registration number and Affirmation of Compliance are not applicable to our admissibility review. As noted in the proposed rule, establishments that manufacture HCT/Ps are required to register and list their HCT/Ps in accordance with part 1271, subpart B, unless they are subject to an exception under 21 CFR 1271.15. When an establishment successfully completes the required registration process, CBER assigns a unique registration number to that firm. FDA established these registration requirements, as well as other requirements in part 1271 (*e.g.,* donor eligibility and current good tissue practice requirements) to prevent the introduction, transmission, or spread of communicable diseases by HCT/Ps. Requiring submission of the HCT/P registration number and Affirmation of Compliance helps to ensure compliance with the part 1271 requirements and is necessary to prevent the introduction, transmission, or spread of communicable diseases by HCT/Ps. Accordingly, we have finalized these requirements as proposed.

11. Tobacco Products

a. *Brand name.* We proposed to require that the brand name for a tobacco product be submitted in ACE at the time of entry.

(Comment 22) Several comments expressed concern that not all tobacco products have brand names.

(Response 22) FDA recognizes that not all tobacco products have specific brand names. One key example is tobacco products for further manufacturing; another example is rolling papers that may not have a specific brand name, and only bear the manufacturer name. Thus, the final rule allows the ACE filer to submit the commercial name for the brand name in ACE if the product is unbranded. Further, in the final rule, this data element does not apply to products solely intended for further manufacturing or to investigational tobacco products.

We note that, for purposes of this rule, brand name includes brand and sub-brand, for example: ''Acme Silver Box 100s,'' or ''Acme Little Cigars.''

b. *Name and address of the ACE filer.* We proposed to require that the name and address of the ACE filer for import entries that include a tobacco product be submitted in ACE at the time of entry. We invited comments on the advantages, disadvantages, and feasibility of requiring an ACE filer to submit this information in ACE at the time of entry. In particular, we invited comment on whether the submission by an ACE filer of the name and address of the ACE filer for import entries that include a tobacco product would help us achieve our goals of facilitating admissibility review and focusing our resources on those products that may be associated with a serious public health risk to consumers and whether this could be sufficiently accomplished through proposed § 1.72(b) or other means.

We received a number of comments in opposition to this provision and after consideration of those comments we have decided not to finalize this provision.

12. Cosmetics

We received no comment regarding proposed § 1.80, other than the comments regarding § 1.72 which are addressed previously in this document. Under proposed § 1.80, we proposed to require that an ACE filer must submit the data specified in § 1.72 at the time of filing entry in ACE. We are finalizing this provision without change.

13. Technical Amendments in the Proposed Rule

a. *Revisions to §§ 1.83 and 1005.2.* We proposed to revise §§ 1.83 and 1005.2 to update the legal references in those sections in order to bring the definition of ''owner and consignee'' in section 801 of the FD&C Act back in line with the customs terminology and to make clear that ''owner or consignee'' continues to mean the person authorized to make entry, now designated under customs law as the ''importer of record.''

(Comment 23) Several comments stated that redefining ''owner or consignee'' in § 1.83 as ''the person eligible to make entry'' under the relevant provisions of the Tariff Act of 1930 was confusing because several persons are in fact eligible to become the ''importer of record'' and therefore to make entry. The commenters suggested that FDA define ''owner or consignee'' as the ''person who makes entry.''

(Response 23) We agree and have revised the final rule to provide that the ''owner or consignee'' is defined as the ''person who makes entry'' under section 484 of the Tariff Act of 1930 (19 U.S.C. 1484). We removed the reference to section 485 of the Tariff Act of 1930 and 19 U.S.C. 1485 as that section relates to the filing of a declaration by the importer of record. We made the same change to § 1005.2.

(Comment 24) One commenter suggested that we should adopt a definition of ''owner or consignee'' that is more consistent with the definition of ''importer'' adopted by FDA in other areas, for example, in our proposed rule on Foreign Supplier Verification Programs (FSVP).

(Response 24) We decline to revise the rule as suggested in this comment. FDA adopted a definition of ''importer'' (§ 1.500) in our final FSVP rule published on November 27, 2015, that best serves the specific purposes of the FSVP requirements for importers of food for humans and animals, consistent with the statutory provisions the FSVP regulation must implement (80 FR 74226 at 74239). The purpose of the technical amendments to 21 CFR 1.83 and 1005.2 is to update the definition of ''owner or consignee'' to take into account revisions to the provisions of the Tariff Act of 1930 that were referenced in those regulations. Since the relevant person for these purposes is the ''importer of record,'' FDA is defining ''owner or consignee'' as the ''importer of record'' as that term is used in the Tariff Act of 1930.

b. *Electronic notification in §§ 1.90 and 1.94.* We proposed to revise § 1.90 to allow FDA to provide notice of sampling directly rather than through the ''collector of customs'' which will normally happen through a secure electronic system. We also proposed to revise § 1.94 to clarify that FDA can provide either written or electronic notification to an owner or consignee when FDA has determined that an article being imported or offered for import may be subject to refusal of admission and/or administrative destruction.

(Comment 25) One commenter requested clarification regarding whether electronic notification will completely replace written or facsimile communication for these purposes.

(Response 25) While our intent is to move to an automated, electronic process to expedite the notification process for both the Agency and the trade, FDA will still consider providing a written or facsimile notification if, under the circumstances, that is the most efficient and effective means to provide any such notification.

(Comment 26) Several commenters supported FDA providing electronic notification of FDA actions but also requested that, in addition to providing notification to the owner or consignee, FDA provide electronic notification to other parties to the import.

(Response 26) We decline to require that the Agency provide electronic notification under § 1.94 to a person other than the owner or consignee which, pursuant to the revision to § 1.83 in the final rule, is the importer of record. The purpose of § 1.94 is to provide the importer of record of an FDA-regulated article being imported or offered for import into the United States with notice and opportunity to present testimony to the Agency prior to refusal of admission of an FDA-regulated article or prior to administrative destruction of certain refused drugs. There is only one importer of record and only that person has the right to notification and a hearing under § 1.94.

14. Effective Date

FDA proposed that the effective date of the final rule would be 30 days after its publication in the **Federal Register**.

(Comment 27) FDA received comments expressing concern about an effective date of 30 days after publication of the final rule, stating that this does not provide enough time for the necessary programming integration between ACE, FDA's OASIS system, the ACE filers' and the importers' systems. One comment suggested that the trade industry will resort to manual data entry while the data feeds are being developed. The comments suggested effective dates that ranged from 60 days to 180 days after publication of the final rule. One comment suggested that FDA adopt a gradual and incremental approach to requiring submission of the data elements in the final rule.

(Response 27) We decline to change the effective date of the final rule. As of July 23, 2016, ACE became the sole CBP-authorized EDI system for electronic entry and entry summary filings for importation of FDA-regulated products. The trade community has already transitioned to ACE and software is available in the marketplace that conforms with the requirements in FDA's Supplemental Guide to the CATAIR. FDA acknowledges that software vendors and the trade community may need to make a small number of alterations to their current programming to be consistent with the requirements in the final rule but 30 days should be sufficient for that purpose. FDA will shortly issue an updated FDA Supplemental Guide to assist software vendors and the trade industry with their programming needs.

15. Summary of Benefits and Costs

(Comment 28) Several commenters emphasized that each additional data element that will be mandated by this FDA rulemaking represents real cost added to the entry process.

(Response 28) We understand that each additional data element that firms will be required to submit in ACE at the time of entry represents added cost to the entry process. FDA has removed some of data elements from the final rule, which should lessen the burden.

While FDA is requiring ACE filers to submit more data upfront, we believe that this may not necessarily end up being burdensome to the industry over time. The Agency believes that, after the initial adjustment stage, submission of the required data will result in faster processing time and cost savings to the industry and FDA.

(Comment 29) Some commenters opined that FDA underestimated transition costs.

(Response 29) In the Preliminary Regulatory Impact Analysis (PRIA) we recognized the uncertainty surrounding our cost estimates for scenario 1, including transition cost estimates in the first year. We requested comments to provide additional data and information to improve these cost estimates. We did not receive any additional information that would help improve our transition cost estimates.

(Comment 30) Several commenters complained that the PGA message set in ACE often experiences system outages, failures to perform necessary functions, and that the time that FDA takes to process entries has already doubled for some ACE filers. They assert that this causes ''down time'' and significant added costs to the trade industry.

(Response 30) System outages and failures to perform necessary functions should be in part attributed to ACE implementation by CBP. In order to address these comments and also Comment 27 about alleging underestimated transition costs, we have revised our ranges for first year estimates and doubled the time necessary for filing entries in ACE for FDA-regulated products during the initial adjustment period.

(Comment 31) Some commenters said that FDA dismissed additional costs of reprogramming caused by further changes to the CATAIR.

(Response 31) In the PRIA (page 22), we stated that because the costs of updating the existing software or purchasing a new one would fall under the cost of CBP action of implementing ACE, we do not include these transition costs in our economic impact analysis. FDA expects that software updates occur regularly as a part of ongoing business practice and the price of new off-the-shelf software would incorporate all ACE requirements, including FDA PGA message set requirements. The commenters did not provide any new information that can be used to estimate the share of reprogramming costs that should be attributed only to FDA rulemaking and not the entire CBP action of implementing ACE.

(Comment 32) One commenter stated that only importers with large budgets can generate, maintain, and provide data electronically.

(Response 32) FDA acknowledges this viewpoint, but because most importers including small businesses typically hire customs brokers to electronically file entries for them in ACE, FDA expects that reprogramming costs would fall on customs brokers as a part of costs of doing business related to imports. As stated previously, approximately 98 percent of importers use customs brokers to file their entries of FDA-regulated products impacted by the final rule.

(Comment 33) Some commenters stated that the cost to file FDA entries in ACE increased by 8 minutes (by over 50 percent) and that 40 percent more staffing is required because, compared to ACS, FDA data requirements are different in ACE.

(Response 33) We incorporated this new information from the industry into our ranges of cost and time estimates for the final rule. That being said, the 50 percent time increase to process an FDA entry in ACE and the estimated 40 percent labor cost increase asserted by commenters could be caused by: (1) The overall switch from ACS to ACE (which should be attributed to the cost of ACE implementation by CBP) and (2) the additional time required for filing FDA data elements that are required in the final rule (which should be attributed to the cost of the FDA rulemaking; that is unless a filer already voluntarily provided these data elements to FDA in ACS on a regular basis). Only the costs caused by (2) should be attributed to FDA rulemaking (see scenario 1 in the PRIA).

Furthermore, it is not clear from the comment whether the 50 percent time increase and the 40 percent staffing cost increase are the same across the entire industry. In the PRIA, FDA estimated that for each FDA-regulated unique product-manufacturer import line, it would take up to 8 additional minutes to prepare and look up information mandated by the proposed rule and up to 4 additional minutes (5 minutes in the first year) to file that information in ACE, for a total of up to 12 minutes per unique import line (up to 13 minutes in the first year). Therefore, an 8 minute increase (= 24 minutes minus 16 minutes) per import line described by these comments is a possible outcome, especially in the initial adjustment stage, that is consistent with our analysis in the PRIA.

D. Technical Amendments in the Final Rule

We made three technical changes to the proposed rule due to our issuance of a final rule on August 31, 2016, regarding the requirements for drug registration and listing (81 FR 60170) that was published after our Notice of Proposed Rulemaking for this rule (published on July 1, 2016 (81 FR 43155)).

Under §§ 1.74(a), 1.75(a) and 1.78(d) of our proposed rule, an ACE filer would be required to submit the Drug Registration Number and Drug Listing Number in ACE at the time of entry for an article which is a drug if it is from a foreign establishment where the drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States that is required to be registered and the drug to be listed under section 510 of the FD&C Act. The final drug registration and listing rule amended 21 CFR parts 207 and 607 which provide the regulatory requirements for drug registration and listing including who must register their establishments and list their drugs annually with the FDA.

In this final rule, we have not changed the requirement that ACE filers submit a Drug Registration Number and a Drug Listing Number in ACE at the time of entry except that, as discussed earlier in

this document, we have removed the requirement for submission of a drug listing number from § 1.78(d) for CBER-regulated drugs. For purposes of clarity regarding the underlying requirement of who must register and list their drugs with FDA, we have added a reference to part 207 in § 1.74(a) for human drugs, § 1.75(a) for animal drugs, and § 1.78(d) for those drugs regulated by CBER. Because the drugs regulated by CBER include blood and blood products we have also added a reference in § 1.78(d) to part 607, which contains the registration and listing requirements for blood and blood products.

VI. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. By requiring import entry filers to submit data elements mandated by this final rule into ACE and updating certain sections of 21 CFR Chapter I, we intend to streamline our import entry admissibility review and reduce ambiguity about the import process. Small businesses will be affected by this final rule in the same way as non-small businesses. Because the burden of switching from ACS to ACE is already covered by CBP's ACE regulation, for those small business filers that choose to continue filing electronically (and, therefore, must use ACE), we believe that providing several additional data elements to FDA via ACE in exchange for a more streamlined process and potentially receiving an import admissibility decision faster would not cause a significant impact. These small businesses would bear the costs of this rule, but would also enjoy most of the benefits. We therefore certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Benefits and Costs of the Final Rule

FDA is issuing a final rule to establish requirements for the electronic filing of import entries in ACE. The final rule will require that certain data elements material to our admissibility review be submitted to the FDA via ACE as part of an electronic import entry. This final regulation will help streamline FDA's existing admissibility procedures for FDA-regulated commodities imported or offered for import into the United States. For import entries submitted electronically, FDA will require that certain key data be submitted as a part of the import entry filing in ACE. The final regulation also provides further clarifications to the import process by revising sections of 21 CFR Chapter I relating to the definition of owner or consignee; the notice of sampling; and notices of FDA actions related to FDA-regulated products being imported or offered for import into the United States, such as notices of hearing on refusal of admission or administrative destruction, to allow for electronic notification by FDA. The rule also clarifies that importers of record of human cells, tissues, or cellular or tissue-based products (HCT/Ps) that are regulated solely under section 361 of the PHS Act and part 1271, unless exempted, will be required to submit the applicable data elements included in the final rule in ACE at the time of entry.

The estimated costs of the final rule—and the cost savings—stem from the mandatory information that will be submitted and collected under the ACE system. In the baseline scenario for our estimates of these costs, we assumed that without this final regulation the information would be collected by ACE only if and to the extent that it is voluntarily provided by filers like under the former ACS system (table 2). Annualized over a 20-year horizon, the costs of complying with this final regulation are between $27.7 million and $69.1 million per year with a 3 percent discount rate; these costs are between $26.8 million and $66.7 million per year with a 7 percent discount rate (table 2). The total annualized cost savings to the entire society cannot be fully quantified because of the lack of certain data currently available to the Agency. Partially quantifiable cost savings are estimated to range from $2.6 million to $43.4 million with a 3 percent discount rate; these partially quantifiable benefits are estimated to range from $2.6 million to $43.4 million with a 7 percent discount rate (table 2). These benefits, in terms of cost savings, to both FDA and the industry that we are able to quantify will arise from FDA simplifying the notification process on certain FDA actions taken by the Agency under section 801 of the FD&C Act by allowing electronic notification of the owner or consignee.

Cost savings to both the industry and FDA that we are unable to quantify will potentially arise from the reduced time of import entry processing and fewer imported products being held, and a shorter timeframe between the time of entry submission and a final admissibility decision by FDA as a result of increased efficiency in FDA's imports admissibility process. Other potential benefits of this final rule that we are unable to quantify will result from compliant FDA-regulated imports reaching U.S. consumers faster and a reduction in the number of non-compliant imports reaching U.S. consumers, thereby making the overall supply of FDA-regulated products on the U.S. market safer. Other potential benefits in the form of cost savings that we are similarly unable to quantify will arise because by revising certain sections of 21 CFR Chapter I the Agency would provide more clarity to the industry about certain aspects of the overall process of import admissibility for FDA-regulated products.

TABLE 2—TOTAL ANNUALIZED COSTS AND BENEFITS OF THE FINAL RULE [1]

Discount rate (percent)	Total annualized costs	Total benefits	
		Cost savings	Other benefits (not quantified)
3	$46.7 million (range $27.7 million to $69.1 million).	$21.0 million (range $2.6 to $43.4 million).	Potential time reduction for processing import entry declarations by FDA; potential increase in predictability of the import process; potentially shorter timeframes for imported products being held pending a final admissibility decision; more efficient use of FDA's internal resources; potentially fewer recalls of imported products; reduction of counterfeit and misbranded imports on the U.S. market; increased efficiency of the overall import process due to decreased ambiguity because of a better defined *the owner or consignee* term, the clarifications related to notice of sampling, and allowing for electronic notice of certain FDA actions related to hearing on refusal of admission of imports and destruction of drugs.
7	$45.1 million (range $26.8 million to $66.7 million).	$21.0 million (range $2.6 million to $43.4 million).	Potential time reduction for processing import entry declarations by FDA; potential increase in predictability of the import process; potentially shorter timeframes for imported products being held pending a final admissibility decision; more efficient use of FDA's internal resources; potentially fewer recalls of imported products; reduction of counterfeit and misbranded imports on the U.S. market; increased efficiency of the overall import process due to decreased ambiguity because of a better defined *the owner or consignee* term, the clarifications related to notice of sampling, and allowing for electronic notice of certain FDA actions related to hearing on refusal of admission of imports and destruction of drugs.

[1] We generated upper and lower bounds using Monte Carlo simulations.

The Economic Analysis of Impacts of the final rule performed in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995 is available to the public in the docket for this final rule (Docket No. FDA–2016–N–1487) at *https://www.regulations.gov* and is also available on FDA's Web site at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 1).

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing each collection of information.

Title: Importer's Entry Notice.

Description: We are issuing a regulation that requires ACE filers to submit certain information in ACE or any other CBP-authorized EDI system related to FDA-regulated products they are importing or offering for import into the United States. The information collection provisions of the rule, specifically the amendment of 21 CFR part 1 by adding §§ 1.70 through 1.81, will allow us to require ACE filers to submit in ACE at the time of entry important and useful information about FDA-regulated products being imported or offered for import into the United States, beyond the information that was submitted previously. The information collection provisions of this rule will facilitate an effective and efficient admissibility review of FDA-regulated products being imported or offered for import into the United States, and protect public health by allowing us to focus our limited resources on those FDA-regulated products being imported or offered for import that may be associated with a greater public health risk.

The authority to issue this regulation and to conduct the associated information collection is found in sections 801, 701, and 536 of the FD&C Act, sections 351, 361, and 368 of the PHS Act, and section 713 of FDASIA (which added section 801(r) to the FD&C Act).

To account for the information collection provisions of the rule, we are amending the information collection currently approved under OMB control number 0910–0046. The information collection approved under OMB control number 0910–0046 has historically accounted for the collection of information from entry filers for FDA-regulated products being imported or offered for import into the United States. The vast majority of this information was submitted by entry filers electronically in ACS. On July 23, 2016, ACE replaced ACS as the sole EDI system authorized by CBP for submission of electronic entry and entry summary information for FDA-regulated products being imported, or offered for import, into the United States. Although much of the information collection pursuant to this rule was previously collected from entry filers for FDA-regulated products being imported or offered for import into the United States, and was approved for collection under OMB control number 0910–0046, this rule requires ACE filers to submit certain information in addition to what entry filers were previously submitting.

The annual recordkeeping requirements for this collection are accounted for by the ''Customs Modernization Act Recordkeeping Requirements'' information collection approved by OMB under OMB control number 1651–0076.

Of note, in addition to accounting for the information collection pursuant to

the rule, we are also adjusting the existing estimated burden approved under OMB control number 0910–0046 upwards to account for an increase in FDA-regulated import lines, to account for the submission of intended use information, which had previously been submitted by entry filers but not accounted for under an approved FDA information collection, and to correct for our previous underestimates of the number of FDA-regulated entries. Accordingly, we are adjusting upward the estimated existing burden under OMB control number 0910–0046 (without yet accounting for the information collection of the rule) to 1,186,464 hours.

The information collection provisions of this rule are in §§ 1.72, 1.73, 1.74, 1.75, 1.76, 1.77, 1.78, 1.79, and 1.80. Section 1.72 requires certain product identifying data elements and certain entity identifying data elements to be submitted in ACE at the time of entry for food contact substances, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products. Sections 1.73 through 1.80 require certain data elements to be submitted in ACE depending on the type of FDA-regulated article being imported or offered for import into the United States. Sections 1.73, 1.74, 1.75, 1.76, 1.77, 1.78, 1.79, and 1.80 apply, respectively, to certain food products (food contact substances, low-acid canned food, and acidified food); human drugs; animal drugs; medical devices; radiation-emitting electronic products; biological products, HCT/Ps, and related drugs and medical devices regulated by CBER; tobacco products; and cosmetics.

Although we did not receive any comments specifically relating to the information collection burden pursuant to the information collection provisions of the rule, we did receive comments relating to the rule and the Regulatory Impact Analysis (RIA). We have revised our information collection burden estimates as appropriate to reflect those revisions we made to the rule and the RIA.

Description of Respondents: The primary respondents to this collection of information are domestic and foreign importers of FDA-regulated articles being imported or offered for import into the United States and ACE filers. An importer of record may be the owner or purchaser of the article being imported or offered for import, or a customs broker licensed by CBP under 19 U.S.C. 1641 who has been designated by the owner, purchaser, or consignee to file the import entry. There is only one importer of record per entry.

Using the estimates in the RIA for the rule, we estimate there are about 41,703 owners or purchasers of FDA-regulated commodities who seek to import FDA-regulated articles (''importers'') into the United States on an annual basis. We have estimated that 97.7 percent of these importers will use customs brokers to file their import entries in ACE, and the other 2.3 percent will file their import entries themselves. We thereby estimate that there are a total of 3,667 entry filers, which includes the 959 owners or purchasers of the article who will file their own import entry in ACE (= 41,703 importers × (100 − 97.7) percent).

Reporting Burden: We have used the relevant assumptions and estimates in Option 1 of the RIA for this rule to estimate the annual information collection burden pursuant to the rule. Option 1 of the RIA is the option which reflects the rule.

Of the data elements that the rule requires ACE filers to submit in ACE at the time of entry, all except for four, were previously collected from entry filers (as either required or optional submissions, depending on the data element) and have been accounted for by the previously approved information collection under OMB control number 0910–0046. One of those four data elements, intended use information, had been collected from entry filers but not accounted for under an OMB approved information collection. Under the rule, intended use information is collected in ACE in the form of an IUC, instead of in the form of a text input into the CBP-required product description field, as it had been collected previously in ACS. The rule provides for the collection of three data elements to be collected in ACE that are new, *i.e.,* we have not previously collected the information from entry filers. One of the three new data elements is required by § 1.72 which applies to food contact substances, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products, and is the telephone and email address for the importer of record, which will help to facilitate electronic notices provided by FDA under § 1.94 for certain FDA actions. One of the other two new data elements is required by § 1.78, which applies only to biological products, HCT/Ps, and related drugs and medical devices, and is the product name, and the other is required by § 1.79, which applies only to tobacco products, and is the brand name of the tobacco product.

Although just three data elements collected pursuant to the rule are new, we expect that filers who were not submitting certain previously optional data elements in ACS that the rule now requires ACE filers to submit in ACE will begin submitting those data elements in order to comply with the rule. We expect this to be the primary cause of the increased reporting burden pursuant to the rule. Notably, however, the submission rates of many of these data elements in ACS were quite high, although their submission varied by commodity. For example, in 2015 approximately 98 percent of medical device lines were submitted in ACS with at least one Affirmation of Compliance. Based on 2014 and 2015 data, we estimate that medical device lines will make up approximately seventy percent of all import lines that will be impacted by the rule. On the other hand, for example, in 2015 only 24 percent of animal drug import lines were submitted in ACS with at least one Affirmation of Compliance, although, based on 2014 and 2015 data, we estimate that animal drugs will make up less than 0.5 percent of all import lines that will be affected by the rule.

Using the estimates in the RIA for the rule, we have estimated that the rule will impact 23,119,465 import lines in the first year. The rule will not impact import lines of foods other than acidified foods, low-acid canned foods, and food contact substances. We have also estimated that 504,768 of affected import lines in the first year represent unique product-manufacturer combinations. We have estimated that the number of impacted import lines will grow at an average rate of about 3.3 percent per year. For the purposes of calculating the additional annual recurring reporting burden of the rule, we have annualized those 3.3 percent per year increases for 3 years.

Other key assumptions in the RIA (Option 1) for the rule that affect our estimate of the additional annual reporting burden are:

- Respondents (ACE filers) will have to become aware of the rule's requirements, which will include activities related to reading the rule, understanding the reporting requirements, consulting with specialists if necessary, determining how to best meet these requirements, and communicating these requirements to workers; and this is a one-time event that will require an average of 30 minutes.
- Respondents (owners or purchasers) will require an administrative worker to locate, gather, and prepare the additional information required by this

rule for each unique product-manufacturer import line; and this will require on average about 2.333 minutes (0.03889 hours) per line.

- Respondents (ACE filers) will require an administrative worker to submit the applicable data elements required in the final rule and Respondents (ACE filers) may also require an owner or manager to check if the information is correct, or alternatively, the administrative worker to quality check their submission using software that is connected to ACE and this will require about 1.166667 minutes (approximately 0.01944 hours) per line on average.
- It will take respondents about 25 percent more time in the first year for an administrative worker to complete each import line and quality check the information, because the respondent will have to adjust to the new system and data elements.

We expect the annual recurring reporting burden for the information collection pursuant to this rule to be as follows:

TABLE 3—ESTIMATED ADDITIONAL ANNUAL RECURRING REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Preparing the required information (applies to unique lines only).	41,703	12.5	521,609	0.03889 (2.333 minutes).	20,285
Quality checks and data submission into ACE	3,667	6,515	23,890,800	0.01944 (1.1667 minutes).	464,543
Total					484,828

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We expect the additional one-time (*i.e.,* occurring only in the first year) reporting burden for the information collection that will result from this rule to be as follows:

TABLE 4—ESTIMATED ONE TIME REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Review and familiarization with the rule	3,667	1	3,667	0.5 (30 minutes)	1,834
First year adjusting to new requirements that will result in an average of 25 percent more time for quality checks and submission into ACE.	3,667	6,305	23,119,465	0.00486 (0.29 minutes).	112,386
Total					114,220

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Accordingly, we estimate that the additional annual reporting burden under the rule will be 599,048 hours in the first year (484,828 recurring hours + 114,220 one-time hours) and 484,828 hours recurring after the first year.

Pursuant to our revision of the information collection under OMB control number 0910–0046, which includes adjustment of the existing burden and amendment to account for the information collection provisions of the rule, the total reporting burden is 1,785,712 hours in the first year (= 1,186,464 adjusted existing burden hours + 484,828 recurring hours pursuant to the rule + 114,220 one-time hours pursuant to the rule) and 1,671,292 hours annually after the first year (= 1,186,464 adjusted existing burden hours + 484,828 recurring hours pursuant to the rule).

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995. FDA will publish a subsequent notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, and Final Unfunded Mandates Reform Act Analysis for Submission of Food and Drug Administration Import Data in the Automated Commercial Environment, available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm#*

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 1005

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1271

Biologics, Drugs, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1, 1005, and 1271 are amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342, 343, 350c, 350d, 350e, 350j, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 373, 374, 379j–31, 381, 382, 384a, 384b, 384d, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264, 271; Public Law 107–188, 116 Stat. 594, 668–69; Public Law 111–353, 124 Stat. 3885, 3889.

■ 2. Add subpart D, consisting of §§ 1.70 through 1.81, to read as follows:

Subpart D—Electronic Import Entries

Sec.

1.70 Scope.
1.71 Definitions.
1.72 Data elements that must be submitted in ACE for articles regulated by FDA.
1.73 Food.
1.74 Human drugs.
1.75 Animal drugs.
1.76 Medical devices.
1.77 Radiation-emitting electronic products.
1.78 Biological products, HCT/Ps, and related drugs and medical devices.
1.79 Tobacco products.
1.80 Cosmetics.
1.81 Rejection of entry.

Subpart D—Electronic Import Entries

§ 1.70 Scope.

This subpart specifies the data elements that are required by the Food and Drug Administration (FDA) to be included in an electronic import entry submitted in the Automated Commercial Environment (ACE) system or any other U.S. Customs and Border Protection (CBP)-authorized electronic data interchange (EDI) system, which contains an article that is being imported or offered for import into the United States and that is regulated by FDA.

§ 1.71 Definitions.

For purposes of subpart D:

ACE filer means the person who is authorized to submit an electronic import entry for an FDA-regulated product in the Automated Commercial Environment or any other CBP-authorized EDI system.

Acidified food means acidified food, as defined in § 114.3(b) of this chapter, and subject to the requirements in parts 108 and 114 of this chapter.

Automated Commercial Environment or *ACE* means the automated and electronic system for processing commercial importations that is operated by U.S. Customs and Border Protection in accordance with the National Customs Automation Program established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act), or any other CBP-authorized EDI system.

Biological product means a biological product as defined in section 351(i)(1) of the Public Health Service Act.

Cosmetic means a cosmetic as defined in section 201(i) of the Federal Food, Drug, and Cosmetic Act.

CBP or U.S. Customs and Border Protection means the Federal Agency that is primarily responsible for maintaining the integrity of the borders and ports of entry of the United States.

Drug means those articles meeting the definition of a drug in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

FDA or Agency means the U.S. Food and Drug Administration.

Food means food as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act.

Food contact substance means any substance, as defined in section 409(h)(6) of the Federal Food, Drug, and Cosmetic Act, that is intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.

HCT/Ps means human cells, tissues, or cellular or tissue-based products, as defined in § 1271.3(d) of this chapter.

Low-acid canned food means a thermally processed low-acid food (as defined in § 113.3(n) of this chapter) in a hermetically sealed container (as defined in § 113.3(j) of this chapter), and subject to the requirements in parts 108 and 113 of this chapter.

Medical device means a device as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, that is intended for use in humans.

Radiation-emitting electronic product means an electronic product as defined in section 531 of the Federal Food, Drug, and Cosmetic Act.

Tobacco product means a tobacco product as defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act.

§ 1.72 Data elements that must be submitted in ACE for articles regulated by FDA.

General. When filing an entry in ACE, the ACE filer shall submit the following information for food contact substances, drugs, biological products, HCT/Ps, medical devices, radiation-emitting electronic products, cosmetics, and tobacco products.

(a) *Product identifying information* for the article that is being imported or offered for import. This consists of:

(1) *FDA Country of Production,* which is the country where the article was last manufactured, processed, or grown (including harvested, or collected and readied for shipment to the United States). The FDA Country of Production for an article that has undergone any manufacturing or processing is the country where that activity occurred provided that the manufacturing or processing had more than a minor, negligible, or insignificant effect on the article.

(2) *The Complete FDA Product Code,* which must be consistent with the invoice description of the product.

(3) *The Full Intended Use Code.*

(b) *Importer of record contact information,* which is the telephone and email address of the importer of record.

§ 1.73 Food.

(a) *Food contact substances.* An ACE filer must submit the information specified in § 1.72 at the time of filing entry in ACE for food that is a food contact substance.

(b) *Low-acid canned food.* For an article of food that is a low-acid canned food, the ACE filer must submit at the time of filing entry the Food Canning Establishment Number and the Submission Identifier, and can dimensions or volume, except that the ACE filer does not need to submit this information in ACE at the time of entry if the article is being imported or offered for import for laboratory analysis only and will not be taste tested or otherwise ingested.

(c) *Acidified food.* For an article of food that is an acidified food, the ACE filer must submit at the time of filing

entry the Food Canning Establishment Number and the Submission Identifier, and can dimensions or volume, except that the ACE filer does not need to submit this information in ACE at the time of entry if the article is being imported or offered for import for laboratory analysis only and will not be taste tested or otherwise ingested.

§ 1.74 Human drugs.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE for drugs, including biological products, intended for human use that are regulated by the FDA Center for Drug Evaluation and Research.

(a) *Registration and listing.* For a drug intended for human use, the Drug Registration Number and the Drug Listing Number if the foreign establishment where the human drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States is required to register and list the drug under part 207 of this chapter. For the purposes of this section, the Drug Registration Number that must be submitted at the time of entry in ACE is the unique facility identifier of the foreign establishment where the human drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States. The unique facility identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the human drug article being imported or offered for import.

(b) *Drug application number.* For a drug intended for human use that is the subject of an approved application under section 505(b) or 505(j) of the Federal Food, Drug, and Cosmetic Act, the number of the new drug application or abbreviated new drug application. For a biological product regulated by the FDA Center for Drug Evaluation and Research that is required to have an approved new drug application or an approved biologics license application, the number of the applicable application.

(c) *Investigational new drug application number.* For a drug intended for human use that is the subject of an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, the number of the investigational new drug application.

§ 1.75 Animal drugs.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE for animal drugs:

(a) *Registration and listing.* For a drug intended for animal use, the Drug Registration Number and the Drug Listing Number if the foreign establishment where the drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States is required to register and list the drug under part 207 of this chapter. For the purposes of this section, the Drug Registration Number that must be submitted in ACE is the Unique Facility Identifier of the foreign establishment where the animal drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States. The Unique Facility Identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this section, the Drug Listing Number is the National Drug Code number of the animal drug article being imported or offered for import.

(b) *New animal drug application number.* For a drug intended for animal use that is the subject of an approved application under section 512 of the Federal Food, Drug, and Cosmetic Act, the number of the new animal drug application or abbreviated new animal drug application. For a drug intended for animal use that is the subject of a conditionally approved application under section 571 of the Federal Food, Drug, and Cosmetic Act, the application number for the conditionally approved new animal drug.

(c) *Veterinary minor species index file number.* For a drug intended for use in animals that is the subject of an Index listing under section 572 of the Federal Food, Drug, and Cosmetic Act, the Minor Species Index File number of the new animal drug on the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.

(d) *Investigational new animal drug number.* For a drug intended for animal use that is the subject of an investigational new animal drug or generic investigational new animal drug application under part 511 of this chapter, the number of the investigational new animal drug or generic investigational new animal drug file.

§ 1.76 Medical devices.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE for medical devices regulated by the FDA Center for Devices and Radiological Health.

(a) *Registration and listing.* For a medical device, the Registration Number for Foreign Manufacturers, Foreign Exporters, and/or Domestic Manufacturers, and the Device Listing Number, required under section 510 of the Federal Food, Drug, and Cosmetic Act and part 807 of this chapter.

(b) *Investigational devices.* For an investigational medical device that has an investigational device exemption granted under section 520(g) of the Federal Food, Drug, and Cosmetic Act, the Investigational Device Exemption Number. For an investigational medical device being imported or offered for import for use in a nonsignificant risk or exempt study, ''NSR'' to be entered in the Affirmation of Compliance for the ''investigational device exemption'' that identifies the device as being used in a nonsignificant risk or exempt study.

(c) *Premarket number.* For a medical device that has one, the Premarket Number. This is the Premarket Approval Number for those medical devices that have received premarket approval under section 515 of the Federal Food, Drug, and Cosmetic Act; the Product Development Protocol Number for those medical devices for which FDA has declared the product development protocol complete under section 515(f) of the Federal Food, Drug, and Cosmetic Act; the De Novo number for those medical devices granted marketing authorization under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act; the Premarket Notification Number for those medical devices that received premarket clearance under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or the Humanitarian Device Exemption Number for those medical devices for which an exemption has been granted under section 520(m) of the Federal Food, Drug, and Cosmetic Act.

(d) *Component.* If applicable for a medical device, an affirmation identifying that the article being imported or offered for import is a component that requires further processing or inclusion into a finished medical device.

(e) *Lead wire/patient cable.* For electrode lead wires and patient cables intended for use with a medical device, an Affirmation of Compliance with the

applicable performance standard under § 898.12 of this chapter.

(f) *Impact resistant lens.* For impact resistant lenses in eyeglasses and sunglasses, an Affirmation of Compliance with the applicable requirements of § 801.410 of this chapter.

(g) *Convenience kit.* If applicable for a medical device, an Affirmation of Compliance that the article imported or offered for import is a convenience kit or part of a convenience kit.

§ 1.77 Radiation-emitting electronic products.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit all of the declarations required in Form FDA 2877 electronically in ACE at the time of filing entry for products subject to the standards under parts 1020–1050 of this chapter.

§ 1.78 Biological products, HCT/Ps, and related drugs and medical devices.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE for biological products, HCT/Ps, and related drugs and medical devices regulated by the FDA Center for Biologics Evaluation and Research.

(a) *Product name* which identifies the article being imported or offered for import by the name commonly associated with that article including the established name, trade name, brand name, proper name, or product description if the article does not have an established name, trade name, brand name, or proper name.

(b) *HCT/P registration and affirmation.* (1) For an HCT/P regulated solely under section 361 of the Public Health Service Act and the regulations in part 1271 of this chapter that is manufactured by an establishment that is required to be registered under part 1271 of this chapter, the HCT/P Registration Number; and

(2) For an HCT/P regulated solely under section 361 of the Public Health Service Act and the regulations in part 1271 of this chapter, an Affirmation of Compliance with the applicable requirements of part 1271 of this chapter.

(c) *Licensed biological products.* For a biological product that is the subject of an approved biologics license application under section 351 of the Public Health Service Act, the Submission Tracking Number of the biologics license application and/or the Biologics License Number.

(d) *Drug registration.* For a drug intended for human use, the Drug Registration Number if the foreign establishment where the human drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States is required to register the drug under part 207 or part 607 of this chapter as applicable. For the purposes of this section, the Drug Registration Number that must be submitted at the time of entry in ACE is the unique facility identifier of the foreign establishment where the human drug was manufactured, prepared, propagated, compounded, or processed before being imported or offered for import into the United States. The unique facility identifier is the identifier submitted by a registrant in accordance with the system specified under section 510(b) of the Federal Food, Drug, and Cosmetic Act.

(e) *Drug application number.* For a drug intended for human use that is the subject of an approved application under section 505(b) or 505(j) of the Federal Food, Drug, and Cosmetic Act, the number of the new drug application or the abbreviated new drug application.

(f) *Investigational new drug application number.* For a drug intended for human use that is the subject of an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act, the number of the investigational new drug application.

(g) *Medical device registration and listing.* For a medical device subject to the registration and listing procedures contained in part 807 of this chapter, the Registration Number for Foreign Manufacturers, Foreign Exporters, and/or Domestic Manufacturers, and the Device Listing Number, required under section 510 of the Federal Food, Drug, and Cosmetic Act and part 807 of this chapter.

(h) *Investigational devices.* For an investigational medical device that has an investigational device exemption granted under section 520(g) of the Federal Food, Drug, and Cosmetic Act, the Investigational Device Exemption Number. For an investigational medical device being imported or offered for import for use in a nonsignificant risk or exempt study, ''NSR'' to be entered in the Affirmation of Compliance for the ''investigational device exemption'' that identifies the device as being used in a nonsignificant risk or exempt study.

(i) *Medical device premarket number.* For a medical device that has one, the Premarket Number. This is the Premarket Approval Number for those medical devices that have received premarket approval under section 515 of the Federal Food, Drug, and Cosmetic Act; the Product Development Protocol Number for those medical devices for which FDA has declared the product development protocol complete under section 515(f) of the Federal Food, Drug, and Cosmetic Act; the De Novo number for those medical devices granted marketing authorization under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act; the Premarket Notification Number for those medical devices that received premarket clearance under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or the Humanitarian Device Exemption Number for those medical devices for which an exemption has been granted under section 520(m) of the Federal Food, Drug, and Cosmetic Act.

(j) *Medical device component.* If applicable for a medical device, an affirmation identifying that the article being imported or offered for import is a component that requires further processing or inclusion into a finished medical device.

§ 1.79 Tobacco products.

In addition to the data required to be submitted in § 1.72, an ACE filer must submit the following information at the time of filing entry in ACE.

(a) *Brand name* of an article that is a tobacco product that is being imported or offered for import. If the article does not have a specific brand name, the ACE filer must submit a commercial name for the brand name. This data element is not applicable to those products solely intended either for further manufacturing or as investigational tobacco products.

(b) [Reserved]

§ 1.80 Cosmetics.

An ACE filer must submit the data specified in § 1.72 at the time of filing entry in ACE.

§ 1.81 Rejection of entry filing.

FDA may reject an entry filing for failure to provide complete and accurate information that is required pursuant to this subpart.

■ 3. In § 1.83, revise paragraph (a) to read as follows:

§ 1.83 Definitions.

* * * * *

(a) The term *owner* or *consignee* means the person who makes entry under the provisions of section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), namely, the ''importer of record.''

* * * * *

■ 4. Revise § 1.90 to read as follows:

§ 1.90 Notice of sampling.

When a sample of an article offered for import has been requested by the district director, FDA shall provide to the owner or consignee prompt notice of delivery of, or intention to deliver, such sample. Upon receipt of the notice, the owner or consignee shall hold such article and not distribute it until further notice from the district director or U.S. Customs and Border Protection of the results of examination of the sample.

■ 5. In § 1.94, revise the first sentence of paragraphs (a) and (c) to read as follows:

§ 1.94 Hearing on refusal of admission or destruction.

(a) If it appears that the article may be subject to refusal of admission, or that the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director shall give the owner or consignee a written or electronic notice to that effect, stating the reasons therefor. * * *

* * * * *

(c) If the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director may give the owner or consignee a single written or electronic notice that provides the notice of refusal of admission and the notice of destruction of an article described in paragraph (a) of this section. * * *

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 6. The authority citation for part 1005 continues to read as follows:

Authority: 21 U.S.C. 360ii, 360mm.

■ 7. Revise § 1005.2 to read as follows:

§ 1005.2 Definitions.

As used in this part:

The term *owner* or *consignee* means the person who makes entry under the provisions of section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), namely, the ''importer of record.''

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE–BASED PRODUCTS

■ 8. The authority citation for part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 9. In § 1271.420, revise paragraph (a) to read as follows:

§ 1271.420 HCT/Ps offered for import.

(a) Except as provided in paragraphs (c) and (d) of this section, when an HCT/P is offered for import, the importer of record must notify, either before or at the time of importation, the director of the district of the Food and Drug Administration (FDA) having jurisdiction over the port of entry through which the HCT/P is imported or offered for import, or such officer of the district as the director may designate to act in his or her behalf in administering and enforcing this part, and must provide sufficient information, including information submitted in the Automated Commercial Environment (ACE) system or any other electronic data interchange system authorized by the U.S. Customs and Border Protection Agency as required in part 1, subpart D of this chapter, for FDA to make an admissibility decision.

* * * * *

Dated: November 21, 2016.

Leslie Kux,

Associate Commissioner for Policy, Food and Drug Administration.

In concurrence with FDA:

Dated: November 21, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy), Department of the Treasury.

[FR Doc. 2016–28582 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2016–N–1896]

New Animal Drugs for Use in Animal Feed; Category Definitions; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 1, 2016, for the final rule that appeared in the **Federal Register** of August 24, 2016. The direct final rule amends the animal drug regulations by revising the definitions of the two categories of new animal drugs used in medicated feeds to base category assignment only on approved uses in major animal species. This document confirms the effective date of the direct final rule.

DATES: Effective date of final rule published in the **Federal Register** of August 24, 2016 (81 FR 57796) confirmed: December 1, 2016.

FOR FURTHER INFORMATION CONTACT: David Edwards, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6205.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 2016 (81 FR 57796), FDA solicited comments concerning the direct final rule for a 75-day period ending November 7, 2016. FDA stated that the effective date of the direct final rule would be on December 1, 2016, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: Therefore, under the animal drug provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 354, 360b, 360ccc, 360ccc–1, and 371), and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 558 is amended. Accordingly, the amendments issued thereby are effective.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28607 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–448]

Schedules of Controlled Substances: Temporary Placement of Furanyl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this final order to temporarily schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide (furanyl fentanyl), and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of furanyl fentanyl into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed

on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle, furanyl fentanyl.

DATES: This final order is effective on November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, every controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated her scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The Administrator transmitted the notice of intent to place furanyl fentanyl into schedule I on a temporary basis to the Assistant Secretary by letter dated June 22, 2016. The Assistant Secretary responded to this notice by letter dated July 8, 2016, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for furanyl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of furanyl fentanyl into schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). Furanyl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for furanyl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of furanyl fentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule furanyl fentanyl was published in the **Federal Register** on September 27, 2016. 81 FR 66224.

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed into schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for furanyl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's updated three-factor analysis, and the Assistant Secretary's July 8, 2016, letter, are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov* under FDMS Docket ID: DEA–2016–0018 (Docket Number DEA–448).

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users with often unpredictable outcomes. Furanyl fentanyl has recently been encountered by law enforcement and public health officials and the adverse health effects and outcomes are documented in the scientific literature. The documented negative effects of furanyl fentanyl are consistent with those of other opioids. On October 1, 2014, the DEA implemented STARLiMS (a Web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS; data from STRIDE and STARLiMS were queried on November 2, 2016. STARLiMS registered 113

reports containing furanyl fentanyl, all reported in 2016, from Alabama, California, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Mississippi, Missouri, Montana, New Jersey, New York, North Carolina, North Dakota, Rhode Island, Tennessee, Texas, Utah, Virginia, Wisconsin, West Virginia, and the District of Columbia.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by participating Federal, State and local forensic laboratories across the country. According to NFLIS, the first report of furanyl fentanyl was recorded in December 2015 in Oregon. From December 2015 through September 2016, a total of 494 submissions to state and local forensic laboratories identifying furanyl fentanyl were reported in NFLIS as a result of law enforcement encounters in California, Connecticut, Florida, Iowa, Kentucky, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Virginia, and Wisconsin (query date: November 2, 2016). The DEA is not aware of any laboratory identifications of furanyl fentanyl prior to 2015.

Evidence suggests that the pattern of abuse of fentanyl analogues, including furanyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of furanyl fentanyl have been encountered in powder form. Furanyl fentanyl has also been encountered in drug paraphernalia commonly associated with heroin or other opioid abuse including glassine bags, and as a residue on spoons and bottle caps. Furanyl fentanyl has been encountered as a single substance as well as in combination with other substances of abuse, including heroin, fentanyl, butyryl fentanyl, and U–47700. Furanyl fentanyl has been connected to fatal overdoses, in which intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

The scientific literature and reports collected by the DEA demonstrate furanyl fentanyl is being abused for its opioid properties. This abuse of furanyl fentanyl has resulted in morbidity and mortality (see updated DEA 3-Factor Analysis for full discussion). The DEA has received reports for at least 128 confirmed fatalities associated with furanyl fentanyl. The information on these deaths occurring in 2015 and 2016 was collected from email communications or toxicology and medical examiner reports received by the DEA. These deaths were reported from five states—Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1). The scientific literature notes additional fatal overdoses connected to furanyl fentanyl. STARLiMS and NFLIS have a total of 607 drug reports in which furanyl fentanyl was identified in drug exhibits submitted to forensic laboratories from December 2015 through September 2016 from law enforcement encounters. It is likely that the prevalence of furanyl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse furanyl fentanyl overlaps with the population abusing prescription opioid analgesics and heroin. This is evidenced by the routes of drug administration and drug use history documented in furanyl fentanyl fatal overdose cases. Because abusers of furanyl fentanyl are likely to obtain this substance through unregulated sources (*i.e.* on-line purchases or drug dealers), the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use a drug for the first time) furanyl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

Furanyl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of furanyl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of furanyl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on reports in the scientific literature and information received by the DEA, the abuse of furanyl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. As with any non-medically approved opioid, the health and safety risks for users are great. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Furanyl fentanyl has been associated with a number of fatalities and non-fatal overdoses as detailed in the scientific literature. The DEA has received information connecting furanyl fentanyl to at least 128 confirmed overdose deaths occurring in 2015 and 2016 in Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1).

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the data and information summarized above, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of furanyl fentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for this substance in treatment in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed into schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for furanyl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated June 22, 2016, notified the Assistant Secretary of the DEA's intention to temporarily place this substance into schedule I.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein sets forth the grounds for his determination that it is necessary to temporarily schedule furanyl fentanyl into schedule I of the CSA, and finds that placement of this synthetic opioid into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Because the Administrator hereby finds it necessary to temporarily place this synthetic opioid into schedule I to avoid an imminent hazard to the public safety, this final order temporarily scheduling furanyl fentanyl will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two

years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h) (1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Permanent scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The permanent scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the permanent scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this final order, furanyl fentanyl will become subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, furanyl fentanyl must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312, as of November 29, 2016. Any person who currently handles furanyl fentanyl, and is not registered with the DEA, must submit an application for registration and may not continue to handle furanyl fentanyl as of November 29, 2016, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA on or after November 29, 2016 is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle furanyl fentanyl, must surrender all quantities of currently held furanyl fentanyl.

3. *Security.* Furanyl fentanyl is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of November 29, 2016.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of furanyl fentanyl must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from November 29, 2016, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of furanyl fentanyl on the effective date of this order must take an inventory of all stocks of this substance on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including furanyl fentanyl) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to furanyl fentanyl pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, and 1312, 1317 and § 1307.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute furanyl fentanyl must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304, and 1312 as of November 29, 2016.

8. *Order Forms.* All DEA registrants who distribute furanyl fentanyl must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of November 29, 2016.

9. *Importation and Exportation.* All importation and exportation of furanyl fentanyl must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of November 29, 2016.

10. *Quota.* Only DEA registered manufacturers may manufacture furanyl fentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of November 29, 2016.

11. *Liability.* Any activity involving furanyl fentanyl not authorized by, or in violation of the CSA, occurring as of November 29, 2016, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of the Administrative Procedure Act (APA) at 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice and comment requirements of 5 U.S.C. 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the Congressional Review Act, ''any rule for which an agency for good cause finds 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.'' 5 U.S.C. 808(2). It is in the public interest to schedule this substance immediately to avoid an imminent hazard to the public safety. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place this substance into schedule I because it poses an imminent hazard to the public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, this order shall take effect immediately upon its publication. The DEA has submitted a copy of this final order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

■ For the reasons set out above, the DEA amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11 by adding paragraph (h)(19) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(19) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: Furanyl fentanyl) (9834).

Dated: November 22, 2016

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–28693 Filed 11–28–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

28 CFR Part 90

[OVW Docket No. 120]

RIN 1105–AB46

Conforming STOP Violence Against Women Formula Grant Program Regulations to Statutory Change; Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs

AGENCY: Office on Violence Against Women, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the STOP (*Services•Training•Officers•Prosecutors*) Violence Against Women Formula Grant Program (STOP Program) and the general provisions governing Office on Violence Against Women (OVW) programs to comply with statutory changes and reduce repetition of statutory language. Also, this rule implements statutory requirements for nondisclosure of confidential or private information relating to all OVW grant programs.

DATES: This rule is effective December 29, 2016.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women, 145 N Street NE., Suite 10W.100, Washington, DC 20530, by telephone (202) 307–6026 or by email at *marnie.shiels@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Violence Against Women Act (VAWA) was enacted on September 13, 1994, by title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. The STOP Program is codified at 42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8. The final rule for this program, found at 28 CFR part 90, subpart B, was promulgated on April 18, 1995. General provisions affecting all OVW grant programs are found at 28 CFR part 90, subpart A.

This rule amends the general provisions applicable to all OVW grant programs and the regulations governing the STOP Program to comply with the amendments to these programs enacted by the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54 (Mar. 7, 2013). These changes to the regulations incorporate the statutory changes, make minor technical corrections, implement enhanced administrative and planning practices for formula grantees, and streamline existing regulations to reduce repetition of statutory language.

In addition, this rule amends an existing regulatory provision, § 90.2, that sets forth certain definitions that apply to all OVW grant programs. Furthermore, the rule adds a new regulatory provision, § 90.4, that is applicable to all OVW grant programs to implement statutory amendments requiring nondisclosure of confidential or private information pertaining to victims of domestic violence, dating violence, sexual assault and stalking.

II. Background

A. Overview of the Violence Against Women Act and Subsequent Reauthorizations

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to

increase the availability of services for victims of these crimes. VAWA was reauthorized and amended in 2000, 2005, and 2013, with each new reauthorization making improvements to the law and adding new programs and provisions.

VAWA recognized the need for specialized responses to violence against women given the unique barriers that impede victims from accessing assistance from the justice system. To help communities develop these specialized responses, VAWA authorized the STOP Program, among others. *See* 42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8; 28 CFR part 90, subpart B.

VAWA requires a coordinated community response to domestic violence, dating violence, sexual assault and stalking crimes and encourages jurisdictions to bring together stakeholders from multiple disciplines to share information and to improve community responses. These often include victim advocates, police officers, prosecutors, judges, probation and corrections officials, health care professionals, and survivors. In some communities, these multidisciplinary teams also include teachers, leaders within faith communities, public officials, civil legal attorneys, health care providers, advocates from population-specific community-based organizations representing underserved populations, and others.

VAWA's legislative history indicates that Congress passed VAWA to improve justice system responses to violence against women. For example, Congress wanted to encourage jurisdictions to treat domestic violence as a serious crime, by instituting comprehensive reforms in their arrest, prosecution, and judicial policies. Congress was further interested in giving law enforcement and prosecutors the tools to pursue domestic violence and sexual assault cases without blaming victims for behavior that is irrelevant in determining whether a crime occurred, while discouraging judges from issuing lower sentences for sexual assault crimes than for other violent crimes. VAWA was intended to bring an end to archaic prejudices throughout the justice system, provide support for victims and assurance that their attackers will be prosecuted, and focus criminal proceedings on the conduct of attackers rather than the conduct of victims.[1]

VAWA added a part T to the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, codified at 42 U.S.C. 3711 *et seq.,* titled Grants to Combat Violent Crimes Against Women, which authorizes four OVW-administered grant programs, including the STOP Program. STOP Program grants are awarded by population-based formula to states to develop and strengthen the justice system's response to violence against women and to support and enhance services for victims.

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464. VAWA 2000 continued and strengthened the federal government's commitment to helping communities change the way they respond to violence against women. VAWA 2000 reauthorized critical grant programs, established new programs, and strengthened federal law. It had an emphasis on increasing responses to victims of dating violence and expanding options and services for immigrant and other vulnerable victims.

VAWA 2000 made several changes relevant to the STOP Program. First, it amended the statutory purposes for which grant funds may be used. Second, it clarified the eligibility of courts as subgrantees. Third, it modified the requirement under the STOP Program that, to be eligible for funding, states must certify that victims not bear the costs for certain filing fees related to domestic violence cases. Finally, it added a new provision applicable to all OVW grant programs requiring grantees to report on the effectiveness of activities carried out with program funds.

On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Public Law 109–162, 119 Stat. 2960. VAWA 2005 strengthened provisions of the previous Acts, including revising the STOP Program, and created a number of new grant programs. It also created a set of universal definitions and grant conditions, including a confidentiality provision, that apply to all programs authorized by VAWA and subsequent legislation. VAWA 2005 had an emphasis on enhancing responses to sexual assault, youth victims, and victims in Indian country. Its provisions included new sexual-assault-focused programs, the addition of sexual assault to a number of OVW grant programs, new youth-focused programs, and the creation of a comprehensive violence against women program for tribal governments.

The revisions to the STOP Program made by VAWA 2005 included adding new purpose areas to the program and modifying the requirements for the development of state implementation plans, the allocation of funds to subgrantees, and documentation of consultation with victim service programs. VAWA 2005 also required that the regulations governing the program ensure that states would recognize and meaningfully respond to the needs of underserved populations and distribute funds intended for culturally specific services—for which the Act created a new set-aside—equitably among culturally specific populations. It further amended the certification requirement under the program related to payment for forensic medical exams for victims of sexual assault and added new certifications related to prohibiting the use of polygraph examinations in sexual assault cases and to judicial notification to domestic violence offenders of laws prohibiting their possession of a firearm.

On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54. VAWA 2013 made further improvements to the OVW grant programs, including several new requirements for the STOP Program. It also included two new historic provisions, one extending civil rights protections based on gender identity and sexual orientation and another recognizing the inherent jurisdiction of Indian tribes to prosecute non-Indians who commit certain domestic violence offenses in Indian country.[2]

VAWA 2013 amended the universal definitions and grant conditions established by VAWA 2005 for all OVW grant programs and amended and added to the STOP Program purpose areas. It also amended the requirements under the STOP Program that states develop and submit with their applications and implementation plan—including documentation of planning committee members' participation in the development of the plan—and consult

[1] *See* S. Rep. No. 103–138, at 37–48 (Sept. 10, 1993).

[2] These two provisions are not addressed in this rule but were addressed in a set of frequently asked questions on the new civil rights provision and in two **Federal Register** notices related to the implementation of the new provision on tribal jurisdiction. *See* U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, ''Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013'' (April 9, 2014), *available at: http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf;* Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 35961 (June 14, 2013); Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 71645 (Nov. 29, 2013).

and coordinate with a variety of entities and stakeholders. VAWA 2013 modified the allocation requirements governing STOP subgrants, creating a set-aside for projects addressing sexual assault, and made changes to the statute's requirement that states provide matching funds for their grant awards. It also made several changes to provisions governing payment for forensic medical exams for sexual assault victims and certain filing costs related to cases of domestic violence, dating violence, sexual assault, and stalking.

B. History Regarding the STOP Program and General Provisions Applicable to OVW Grant Programs

The STOP Program regulations and general provisions were originally promulgated in April, 1995. On December 30, 2003, OVW published a proposed rule to clarify the match requirement for the STOP Program, which was never finalized and subsequently was superseded by changes to the statute made by VAWA 2005. On January 21, 2004, section 90.3, regarding participation by faith based organizations was added to the general provisions. OVW published the Notice of Proposed Rulemaking for the current update on May 11, 2016 at 81 **Federal Register** 29215. In developing the proposed rule, OVW held a series of listening sessions with relevant constituencies to solicit input on updating the STOP Program regulations and general provisions. The specific sessions were focused on state STOP Program administrators, state coalitions, culturally specific and underserved populations, tribes and tribal coalitions, nonprofit organizations, and the justice system. Comments on the proposed rule were due by July 11, 2016.

C. Costs and Benefits

As discussed in more detail under Executive Orders 12866 and 13563 (in the Regulatory Review discussion below), the rule clarifies the statutory requirements, but does not alter the existing program structure. Updating the existing regulations to clearly and accurately reflect the statutory parameters will facilitate state compliance with VAWA, and thus avoid potentially costly non-compliance findings.

III. Discussion of Comments and Changes Made by This Rule

As discussed above, this rule updates the regulations for the STOP Program and the general provisions governing OVW grant programs, including definitions and requirements for nondisclosure of confidential victim information, to comply with statutory changes and reduce repetition of statutory language. The structure and section numbering of the proposed rule has not been changed in the final rule, but some of the specific provisions have, as described below.

A. Summary of Comments and Changes from the Proposed Rule

OVW received 12 comments from state STOP grant administrators, national organizations focusing on violence against women, one state domestic violence coalition, individuals, and one creator of a cloud-based database for domestic violence and sexual assault service providers. Comments generally fell into six categories: (1) Reducing administrative burdens on state administering agencies, (2) encouraging victim-centered best practices, (3) clarifying requirements about the states' STOP implementation planning processes, (4) clarifying other STOP Program requirements, particularly those related to underserved and culturally specific populations, (5) clarifying the statutory confidentiality provision that restricts the release of victim identifying information, and (6) enhancing language access. The most significant changes in response to the comments are as follows:

1. Changed the definition of ''prevention'' to clarify the difference between primary and secondary prevention (90.2(d)).

2. Provided additional detail and clarification regarding the confidentiality provision (90.4(b)).

3. Provided additional guidance to states on assessing qualifications of applicants for the culturally specific set aside of funds and clarified that they are encouraged to exceed the minimum statutory set aside of three percent (90.11(c)(3)).

4. Increased the time period covered by state implementation plans from three years to four (90.12(a)).

5. Clarified the requirement to consult with various entities in the process of developing and updating implementation plans and the documentation required regarding such consultation (90.12(b) and (c)).

6. Clarified that, if the Prison Rape Elimination Act (PREA) requirements no longer apply to the STOP Program, then states will not need to address PREA compliance in their implementation plans and that only states that submitted assurances under PREA need to submit information on how they will spend the funds toward coming into compliance with PREA (90.12(g)(7)).

7. Clarified when states may reallocate returned STOP funds and funds from allocations for which the state did not receive sufficient applications (90.25).

B. Overarching Comments

OVW received one comment expressing overall support for the proposed rule. OVW also received an overarching comment stating that the commenter would like to see more flexibility in categories within the STOP Program to better meet victim needs, such as more flexibility in emergency victim assistance. As long as a particular cost is related to victim safety and allowable under the cost principles in 2 CFR part 200, states have flexibility regarding how to use victim service funds. For example, states may use STOP funds to support emergency transportation, medical expenses, and other necessities where needed for victim safety. Because states already have considerable discretion to direct funding to emergency victim assistance, no change was made in the final rule. The other comments all pertained to specific sections of the proposed rule.

C. Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs

VAWA 2005 established universal definitions and grant conditions for OVW grant programs, and VAWA 2013 amended these provisions. One of these grant conditions protects the confidentiality and privacy of persons receiving victim services for the purpose of ensuring victim safety. This section discusses the comments received on Subpart A, the definitions and grant conditions sections of the proposed rule, including provisions dealing with confidentiality, and any changes made to this subpart in the final rule.

§ 90.1. General

Section 90.1 provides general information, including specification of which statutes are implemented by the rule and an explanation of the different subparts of the rule. In the final rule OVW also has added language to clarify to which grants and subgrants this updated rule will apply. Specifically, it will take effect with grants issued by OVW after the effective date of the rule (30 days from publication in the **Federal Register**). For subgrants, it will take effect with subgrants issued by states under the STOP and Sexual Assault Services Formula Grant Programs after that date, even if such subgrants are

made with grant funds awarded by OVW prior to that date.

§ 90.2. Definitions

The universal definitions added by VAWA 2005, codified at 42 U.S.C. 13925(a), superseded previous program-specific definitions originally enacted in 1994. The rule revises the definitions section of part 90, 28 CFR 90.2, by removing definitions from the existing regulations that are codified in statute, adding definitions for terms that are used in statute but not defined, and clarifying statutory definitions that, based on OVW's experience managing its grant programs, require further explanation.

Section 90.2 currently contains definitions for the following terms: Domestic violence, forensic medical examination, Indian tribe, law enforcement, prosecution, sexual assault, state, unit of local government, and victim services. This rule removes the definitions for domestic violence, Indian tribe, law enforcement, sexual assault, state, and victim services, as they all appear in the statute and do not need further clarification.

The rule revises the definition of ''forensic medical examination,'' a term that is used but not defined in a statutory provision directing that states, Indian tribal governments, and units of local government may not receive STOP Program funds unless they incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault. *See* 42 U.S.C. 3796gg–4(a)(1). The rule changes the list of minimum elements that the exam should include to bring the definition in line with best practices for these exams as they have developed since part 90 was implemented in 1995, and, in particular, with the Department of Justice's national protocol for sexual assault medical forensic examinations (SAFE Protocol), which was updated in April 2013.[3] OVW received several comments on this definition. Three commenters recommended adding ''obtaining informed consent'' to the definition and two of them also suggested adding an assessment of the patient's state of mind. Although these are best practices as discussed in the SAFE Protocol, they are not appropriate for inclusion here, because this definition applies to the specific context of meeting the certification requirement for the STOP Program that states must ensure victims do not incur ''out of pocket'' costs for forensic medical examinations. The definition is not intended to be a comprehensive description of best practices for conducting the examination but rather a list of elements for which victims should not incur ''out of pocket'' costs.

One commenter also suggested adding ''medical care and treatment'' to the definition of ''forensic medical examination.'' Again, although this does represent best practice as exemplified in the SAFE Protocol, it is not appropriate for inclusion in this context because it would impose an increased cost to states not mandated by the STOP Program statute. The current rule allows states flexibility in determining whether to cover medical costs that are not within the definition of forensic medical examination, such as testing and treatment for sexually transmitted diseases. Many states do cover such expenses, but not all do. Payment for such expenses is often available through programs funded through the Victims of Crime Act (VOCA). OVW also notes that the definition does include ''head-to-toe examination of the patient,'' which is for both medical and forensic purposes. This examination is used to identify injuries for treatment purposes and provide documentation that could potentially be used by the criminal justice system. This commenter also suggested changing ''sexual assault victim'' to ''victim of sexual assault'' to clarify that the provision also applies to domestic violence survivors who are sexually assaulted. OVW agrees and has made this change to paragraph 90.2(c).

The rule's definition of ''prosecution'' contains minor technical changes from the definition in the existing regulation. These changes implement the VAWA 2005 provision making the definitions applicable to all OVW grant programs and conform the definition to the statute. The definition retains the existing regulation's clarification of the statutory definition, which explains that prosecution support services fall within the meaning of the term for funding purposes. This clarification continues to be important because allocating prosecution grant funds to activities such as training and community coordination helps to achieve the statutory goal of improving prosecution response to domestic violence, dating violence, sexual assault, and stalking. OVW received one comment on this definition, noting that it included participation in domestic violence task forces and enforcing domestic violence restraining orders, but did not include task forces and restraining orders focused on sexual assault, dating violence, or stalking. OVW has added dating violence, sexual assault, and stalking to paragraph 90.2(e) to correct this oversight.

In addition, the statutory definition for ''prosecution'' uses, but does not define, the term ''public agency,'' which the rule defines using the definition for this term in the Omnibus Crime Control and Safe Streets Act. *See* 42 U.S.C. 3791.

The rule revises the definition of ''unit of local government,'' which did not have a statutory definition specific to all OVW grant programs until the enactment of VAWA 2013, to make it consistent with the statutory language. In addition, it includes in the definition a list of entities and organizations that do not qualify as units of local government for funding purposes and would need a unit of local government to apply on their behalf for those programs where ''unit of local government'' is an eligible entity but other types of public or private entities are not eligible. The list reflects OVW's long-standing interpretation of the term ''unit of local government'' and is consistent with OVW's practice of excluding these entities and organizations from eligibility to apply for OVW funding as units of local government. The one comment on this definition was a recommendation for OVW to consult with tribes on the impact of the change. OVW declines to take this suggestion for two reasons. First, the change eliminating tribes from the definition of ''unit of local government'' is dictated by the definition in VAWA 2013 and cannot be changed by regulation. By excluding tribes from the definition of ''unit of local government,'' VAWA 2013 excluded tribes from a provision in the authorizing statute for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program that reduces the award amount to states and units of local government by five percent if the jurisdiction does not have certain laws, regulations, or policies regarding HIV testing of sex offenders. Second, even if the regulation could alter the statutory definition, OVW notes that this statutory change has no impact on tribal eligibility for OVW grants. ''Tribal government'' is an eligible entity for every OVW grant program that includes ''unit of local government'' as an eligible entity.

The rule also adds definitions to the regulation for terms that are used in OVW grant program statutes but are undefined and that OVW believes would be helpful to applicants and grantees. The term ''community-based organization'' is defined in 42 U.S.C. 13925(a), but the term ''community-based program,'' which also appears in

[3] U.S. Department of Justice, Office on Violence Against Women, ''A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents'' (2d ed. 2013), available at *https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf.*

OVW grant program statutes, is not. To preserve consistency across OVW programs and minimize confusion, OVW is proposing to use the statutory definition for both terms.

The rule provides a definition of ''prevention'' that distinguishes the term from ''outreach'' both because OVW has observed that some grant applicants propose outreach activities to implement prevention programming under OVW programs and because funding for ''prevention'' is more limited than funding for ''outreach.'' The proposed rule defined ''prevention program'' as ''a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place. Prevention is distinguished from 'outreach,' which has the goal of informing victims and potential victims about available services.'' OVW received three different comments on this definition. The first recommends that the definition describe the distinction between ''primary'' and ''secondary'' prevention so that programs that interrupt and prevent future domestic violence, dating violence, sexual assault, and stalking after it has taken place can be distinguished from programs that focus on these crimes in a context where they have not yet taken place. This commenter specifically recommended using language from the Family Violence Prevention and Services Office within the Department of Health and Human Services. The second commenter recommended changing ''programs'' in the definition to ''activities and strategies.'' The third commenter recommended deleting ''in the first place'' from the definition. OVW agrees with all the comments and the definition in paragraph 90.2(d) has been revised to make clear that ''prevention'' includes both primary and secondary prevention efforts and to define the terms primary and secondary prevention. The final sentence from the proposed rule, which distinguishes ''prevention'' from ''outreach'' is retained in the final rule.

Finally, the rule adds a definition for ''victim services division or component of an organization, agency, or government'' because the rule uses this term in implementing the confidentiality provision enacted by VAWA 2005 and amended by VAWA 2013, which is discussed in more detail in the next section.

§ 90.4. Grant Conditions

VAWA 2005 added grant conditions for all OVW grant programs, including a provision on confidentiality and privacy of victim information and these provisions were amended by VAWA 2013. *See* 42 U.S.C. 13925(b). Section 90.4(a) provides that the grant conditions in 42 U.S.C. 13925(b) apply to all grants awarded by OVW and all subgrants under such awards. One commenter requested that OVW also specify that grantees and subgrantees are required to comply with Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act. The commenter correctly notes that all grantees and subgrantees must comply with these laws. The grantmaking process, however, already requires grantees and subgrantees to comply with these and other civil rights statutes through standard assurances that the grantee signs. These are available on the OVW Web site at *www.usdoj.gov/OVW.* Because compliance with all applicable civil rights laws is already addressed through these assurances, it is not necessary to include compliance with two of these laws in this regulation.

The statutory confidentiality provision recognizes the critical importance to victim safety of protecting victims' personally identifying information. It generally requires grantees and subgrantees to protect victim confidentiality and privacy to ensure the safety of victims and their families and prohibits the disclosure of victims' information without their informed, written, and reasonably time-limited consent. These requirements, implemented in section 90.4(b), apply to all OVW grant programs, not just STOP grants. In administering this confidentiality provision, OVW has received numerous inquiries regarding what kinds of disclosures require written consent, and OVW is attempting to answer these questions in this rule.

In the Notice of Proposed Rulemaking, OVW requested comments about the propriety of placing victim information on third-party (or ''cloud'') servers. Seven commenters responded to this request. Commenters were generally concerned about the privacy of information on such third-party servers, but also noted the need for flexibility in access to client information as service provision models expand from just office-based services. Commenters raised specific questions related to the use of third-party servers, such as who owns the data, who has access to the data, what security measures are in place to prevent unauthorized release of information, and what happens if the provider receives a subpoena for release of client information. Some commenters recommended specifying the answers to the above questions in the agreement between the victim service provider and the cloud storage provider. Some commenters also recommended the use of encryption to protect the client information. Two commenters specifically recommended the use of ''zero knowledge'' encryption, where the encryption key is stored on the victim service provider's server so the storage provider only has access to encrypted (and therefore unreadable) information. Two commenters recommended the use of background checks of the employees of the storage providers. One commenter noted that, while they felt that cloud storage should be acceptable, it should not include sharing of client information in regional or statewide databases such as Homeless Management Information Systems. Based on these comments, OVW added a new paragraph (b)(5) to § 90.4: ''Inadvertent release. Grantees and subgrantees are responsible for taking reasonable efforts to prevent inadvertent releases of personally identifying information or individual information that is collected as described in paragraph (b)(2).'' The reasonable efforts mentioned here apply not just to third-party electronic storage, but also protections for paper copies of information or information stored on internet-connected computers at the victim service provider. As suggested by one commenter, the use of third-party storage is not, by itself, a release, but can lead to release without sufficient precautions. ''Reasonable efforts'' in the case of third-party storage include, but are not limited to, ensuring that the contract with the storage provider specifies that the service provider owns the information and ensuring that there are sufficient security protocols to protect the information.

Section 90.4(b)(2)(iii) provides that the confidentiality provision applies to disclosures from victim service divisions or components of an organization, agency, or government to other non-victim services divisions or components and to the leadership of such organization, agency, or government. It also provides that the leadership shall have access without releases only in ''extraordinary and rare'' circumstances. OVW requested comments on this provision and received three comments. Two commenters were concerned that the phrase ''extraordinary and rare circumstances'' is too vague and asked OVW to provide additional guidance. In response, OVW has added a statement clarifying that ''Such [extraordinary and rare] circumstances do not include routine monitoring and supervision[]'' to the end of paragraph (b)(2)(iii). OVW

decided against including a list of circumstances that justify disclosure because such determinations will be fact-based. OVW notes, however, that one example of such an extraordinary and rare circumstance justifying release to an organization's leadership would be where there are allegations of fraud against the victim service division or one of its staff members. One commenter was concerned that this provision could be read to include victim-witness programs at prosecution or law enforcement offices. By statute (42 U.S.C. 13925(b)(2)(D)(i)(III)), the confidentiality provision does not apply to ''law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.'' In addition, § 90.2(h) of this rule defines ''victim services division or component of an organization, agency, or government'' as a ''division within a larger organization, agency, or government, where the agency has as its primary purpose to assist or advocate for victims of domestic violence, dating violence, sexual assault, or stalking and has a documented history of work concerning such victims.'' Victim-witness programs in prosecution or law enforcement offices would generally be for law enforcement or prosecution purposes, even if they are also assisting victims.

Section 90.4(b)(3) governs releases of personally identifying information or individual information collected in connection with services. One commenter requested that OVW add language providing that releases must be accessible to all victims, including those with limited literacy and/or English language proficiency. OVW declines to make this change because it is not necessary. Both the statute and the regulation require informed releases; if the victim does not understand the release, it cannot be truly ''informed.'' Section 90.4(b)(3)(ii), as revised, requires that the grantee or subgrantee engage in a conversation with the victim regarding the purpose for and limits on the release, and the grantee or subgrantee should record the agreement as to the scope of the release. This conversation should ensure that the victim understands the release. In addition, with regard to language access, there are already civil rights laws and regulations requiring that grantees and subgrantees take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency. Grantees and subgrantees explicitly agree to comply with these laws by signing relevant assurances and certifications when applying for OVW grants and upon the receipt of OVW financial assistance. For more information on language access requirements, the Office of Justice Programs, Office for Civil Rights (OCR) has information on its Web page at *http://ojp.gov/about/ocr/lep.htm.*

Section 90.4(b)(3)(i) addresses the circumstances under which identifying information about victims served by OVW grantees and subgrantees may be released, one of which is when the release is compelled by a court mandate (§ 90.4(b)(3)(i)(C)). One commenter requested that OVW clarify that ''court mandates'' include case law mandates, such as those imposing a ''duty to warn'' when there is a specified threat of harm. OVW accepts this comment. It is consistent with guidance that OVW has provided to grantees. Section 90.4(b)(3)(i)(C) has been revised to read ''release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.''

Section 90.4(b)(3)(ii) addresses criteria for victim releases. One commenter recommended that, within the context of signing a release of information, grantees and subgrantees must reach agreement with the victim about what information the victim wants shared and record that agreement as part of the release. Another commenter recommended that the victim specify to whom and what specific information is to be shared. OVW agrees and has rewritten the third sentence of this paragraph to specify that grantees and subgrantees must discuss with the victim why the information might be shared, who would have access to the information, and what information could be shared under the release. They must also reach agreement with the victim about what information would be shared and with whom and record the agreement about the scope of the release.

Section 90.4(b)(3)(ii)(C) and (D) address releases for minors and legally incapacitated persons with court-appointed guardians. With regard to minor children, the rule provides that both the minor and the parent or guardian sign the release. One commenter noted that the rule should account for situations where the child is too young to sign the release. OVW agrees and has added language to clarify that, if a minor is incapable of knowingly consenting, the parent or guardian of that minor may provide consent. The rule also provides that, if a parent or guardian consents for a minor, the service provider should attempt to notify the minor as appropriate. Another commenter requested that OVW include language that consent for release may not be given by the abuser of the minor or the abuser of the other parent of the minor. Such language already was included in section 90.4(b)(3)(ii)(C) of the proposed rule.

Section 90.4(b)(4) addresses release of information about deceased victims for fatality reviews. OVW solicited comments on this provision and received four responses. The proposed rule provided that the prohibition on sharing information did not apply to information about deceased victims being sought for fatality reviews if the review met certain criteria. All commenters were concerned about the impact on victims if, prior to their deaths, they were aware of the possibility of release and recommended not allowing release without consent. Four commenters noted that such consent could be provided by a personal representative of the victim, if available. OVW is seeking to balance these concerns with the important work that is done by fatality reviews. In a fatality review, community responders examine homicides and suicides resulting from domestic violence to identify gaps in services, responses, and prevention efforts. These reviews can lead to systemic improvements that can prevent future deaths. The final rule requires grantees to make a reasonable effort to gain consent from a personal representative, but, if they are not able to do so after such efforts, it does not preclude their full participation in the fatality review. Also, the final rule permits sharing identifying victim information only when the fatality review has an underlying objective to prevent future deaths, enhance victim safety, and increase offender accountability, and includes both policies and protocols to protect against the release of information outside the fatality review team and limits release to information that is necessary for the purposes of the fatality review. OVW notes that many states or tribes have specific confidentiality and privilege laws that apply to victim service providers and other OVW grantees and subgrantees. This provision would allow release for VAWA purposes but would not override state or tribal laws that do not allow for release. Some laws, however, specifically authorize victim service providers to release information for fatality reviews. The language of the final rule is an attempt to ensure that the VAWA confidentiality provision is implemented in a manner that is compatible with such state or tribal

laws, including both where those laws are more protective of victim confidentiality and where they authorize release.

Section 90.4(b)(6) (renumbered from (5) in the proposed rule) requires grantees and subgrantees to document their compliance with the confidentiality requirement by submitting an acknowledgement form indicating that they have notice of the requirement and that they will create and maintain documentation of compliance. OVW received one comment on this provision. The commenter recommended that OVW also require grantees and subgrantees to document their compliance with Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act. The standard assurances (available at *https://www.justice.gov/ovw/how-apply*) contain a provision that requires STOP Program grantees and subgrantees to comply with applicable civil rights laws, including the Civil Rights Act, the Rehabilitation Act, and VAWA. Title VI requires grantees and subgrantees to provide appropriate language-access services to limited English proficient (LEP) beneficiaries. See 28 CFR 42.405(d). The U.S. Department of Justice has issued guidance for recipients on their responsibility under Title VI to provide language-access services. *See* Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41,455 (June 18, 2002). OVW, through the Office of Justice Programs, Office on Civil Rights (OCR), conducts compliance reviews to ensure that recipients are serving LEP beneficiaries and LEP service populations. State administering agencies that subgrant STOP Program funds to other organizations must have ''Methods of Administration'' (28 CFR 42.105(d)(2)) that monitor whether their subrecipients have a language assistance plan. OCR provides technical assistance to recipients about their obligation to provide language-access services through an online training program (*http://ojp.gov/about/ocr/ocr-training-videos/video-ocr-training.htm* (last visited July 21, 2016)), in-person presentations, and telephone consultations. In addition, aggrieved parties (and third parties) may file an administrative complaint with the OCR alleging a recipient's failure to provide appropriate language-access services in violation of Title VI (28 CFR. 42.107(b)) and VAWA (28 CFR 42.205). OCR will investigate the complaint, and, if the complaint has merit, OCR will seek appropriate remedies. The enforcement scheme that is already in place holds recipients accountable for providing appropriate language-access services to LEP beneficiaries in accordance with Title VI and VAWA. Therefore there is no need for additional documentation under this rule.

An additional comment on this paragraph recommended the language, which was already included in the proposed rule, that requires grantees and subgrantees to document compliance with the confidentiality requirement.

OVW also has added a new section 90.4(c) to specify that victim eligibility for direct services is not dependent on the victim's immigration status, for consistency with the Office for Victims of Crime Victims of Crime Act (VOCA) Assistance Program Final Rule, which was issued after the OVW proposed rule. This is also consistent with the Attorney General Order on Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation (Attorney General Order No. 2353–2001, 66 F. R. 3616 (Jan. 16, 2001)). In addition, on August 5, 2016, Attorney General Loretta E. Lynch, Secretary Sylvia Mathews Burwell of the U.S. Department of Health and Human Services (HHS) and Secretary Julián Castro of the U.S. Department of Housing and Urban Development (HUD) released a letter [4] to recipients of federal funding to provide more information on access to services for immigrant victims. The letter explains that immigrants cannot be denied access to certain services necessary to protect life or safety on the basis of their immigration status.

D. STOP Formula Grant Program

1. Organization

OVW proposed significant changes in the proposed rule to the organization of Subpart B, the STOP Program regulations, and is retaining these changes, without further alteration, in the final rule. The following chart shows the changes from the current rule to both the proposed and final rules.

Section No.	Current rule	Disposition of current section	Proposed rule/final rule
90.10	Description of STOP (*Services-Training-Officers—Prosecutors*) Violence Against Women Formula Grant Program.	Same	STOP (*Services-Training-Officers—Prosecutors*) Violence Against Women Formula Grant Program—General.
90.11	Program Criteria	Merged with 90.10 and 90.12	State office.
90.12	Eligible Purposes	Merged with 90.10	Implementation plans.
90.13	Eligibility	Now in 90.10	Forensic medical examination payment requirement.
90.14	Forensic Medical Examination Payment Requirement.	Now 90.13	Judicial notification requirement.
90.15	Filing Costs for Criminal Charges	Same	Costs for criminal charges and protection orders.
90.16	Availability and Allocation of Funds	(a) Is now in 90.17, (b) and (c) are merged with 90.12.	Polygraph testing prohibition.
90.17	Matching Requirements	Now 90.18	Subgranting of funds.
90.18	Non-supplantation	Removed	Matching funds.
90.19	State Office	Now 90.11	Application content.
90.20	Application Content	Now 90.19.	
90.21	Evaluation	Same	Evaluation.
90.22	Review of State Applications	Same	Review of State applications.

[4] *https://www.justice.gov/ovw/file/883641/download.*

Section No.	Current rule	Disposition of current section	Proposed rule/final rule
90.23	State Implementation Plan	Now 90.12	Annual grantee and subgrantee reporting.
90.24	Grantee Reporting	Now 90.23	Activities that may compromise victim safety and recovery.
90.25			Reallocation of funds.

2. Removing Duplicative Regulatory Language

OVW is removing much of the existing regulation to avoid duplication with the statute. Specifically, OVW is removing the following sections and paragraphs of the current regulation for this reason: §§ 90.10; 90.11(a); 90.12; 90.16(a); and 90.18. Other sections have been streamlined by referencing the statutory provision rather than repeating the statutory language.

3. Statutory Changes

As discussed above, VAWA of 2000, VAWA 2005, and VAWA 2013 have amended and enhanced the STOP Program. Specific changes are as follows:

- Expanded purpose areas (incorporated by reference in § 90.10)
- Changes in allocations: (1) The victim services allocation increased from 25 percent to 30 percent; (2) a set aside was added of ten percent of the victim services funds (or three percent of the total award) for culturally specific community-based organizations; (3) a set aside was added of five percent to courts; and (4) a 20-percent set aside was added for programs that meaningfully address sexual assault in two or more of the specified allocations (§ 90.11(c))
- Changes in the implementation planning process, including an expanded list of entities with which the state is required to consult and additional information that needs to be included in a state's implementation plan (§ 90.12)
- Changes to the existing certification requirements and additions of new certification requirements (§ 90.13, forensic medical examination payment; § 90.14, judicial notification; § 90.15, costs for criminal charges and protection orders; and § 90.16, polygraph testing prohibition)

The rule also removes references to the Assistant Attorney General for the Office of Justice Programs to reflect statutory changes made by the Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (Nov. 2, 2002).

4. Section-by-Section Summary of the Regulatory Text

This section describes each provision of the regulatory text, any comments received, and any changes made to the final rule.

§ 90.10 STOP (*Services-Training-Officers-Prosecutors*) Violence Against Women Formula Grant Program—General

Section 90.10 lists the eligible applicants for the program and specifies that the purposes, criteria, and requirements for the program are established by 42 U.S.C. 3796gg *et seq.* The only comments on this section expressed support.

§ 90.11 State Office

Section 90.11 describes the role of the state office, which is to be designated by the chief executive of the state. As detailed in § 90.11(a) and (b), the state office is responsible for submitting the application, including certifications, developing the implementation plan, and administering the funds. Three commenters felt that paragraph (b) was too burdensome in that it required the state administering agencies for various programs to coordinate on disbursement of funds (rather than implementation planning). The requirement to coordinate on disbursement is in the current rule, but, since the issuance of that rule, VAWA 2013 added the requirement to coordinate on implementation planning. OVW agrees that the existing requirement to coordinate with other state administering agencies on disbursement of funds is no longer necessary in light of the VAWA 2013 amendment and is removing it from the final rule. The requirement to coordinate on implementation planning is at § 90.12(b)(6).

Section 90.11(c) is intended to ensure that statutorily allocated funds are meaningfully targeted to the appropriate entities and activities. Paragraph (c)(3) discusses the allocation for culturally specific services. One commenter recommended changing the second sentence to clarify that recipients should have expertise specifically on services to address the demonstrated needs of the targeted racial and ethnic minority group. OVW agrees and has changed the second sentence accordingly. This commenter also requested that the rule make clear that the set aside of ten percent (out of the thirty percent for victim services) is a minimum and not a cap. OVW agrees and has added language to § 90.11(c)(3) to encourage states to provide funding above the three percent minimum to address the needs of racial and ethnic minority groups.

Another commenter expressed support for the paragraph's language clarifying eligibility for the culturally specific set aside and recommended that OVW go further in delineating an assessment approach for subgrant applications under this category. OVW accepts this recommendation and is adding a new sentence to paragraph (c)(3) that provides that states should tailor their subgrant application process to meaningfully assess the qualifications of applicants for the culturally specific set aside.

One additional commenter noted that the definition of ''culturally specific'' is not the same as the definition of ''underserved'' and that therefore some populations of victims (such as Deaf and lesbian, gay, bisexual, and transgender (LGBT)) are excluded. OVW cannot alter the definition to include additional underserved populations because of a statutory change in VAWA 2013. Prior to VAWA 2013, states could use the culturally specific set aside to provide culturally specific services to any underserved population. VAWA 2013 changed the definition of culturally specific so that it now means ''primarily directed toward racial and ethnic minority groups.'' 42 U.S.C. 13925(b)(6). As a result, the STOP Program's set aside for culturally specific community-based organizations may only fund subgrantees that target racial and ethnic minority groups. 42 U.S.C. 3796gg–1(c)(4)(C). States are still required to consider the full range of underserved populations in the state and ensure that funds are equitably distributed toward the needs of such populations, 42 U.S.C. 3796gg–1(e)(2)(D).

Section 90.11(c)(4) provides guidance with regard to the twenty-percent sexual

assault set aside. One commenter supported language directing how states evaluate whether projects qualify for the sexual assault set aside generally, but objected to allowing states to assess the percentage of a project that addresses sexual assault and count that percentage toward the set aside. The commenter noted that projects that primarily address other crimes should not count toward the sexual assault set aside. OVW agrees that only projects that truly address sexual assault should be counted and has removed the sentence that would permit states to aggregate percentages from projects that do not primarily address sexual assault. Projects that qualify for the set aside may include, but are not limited to, sexual assault victim advocacy services, sexual assault forensic examiner programs, Sexual Assault Response Teams, law enforcement or prosecution training on or specialized units for sexual assault, projects addressing rape kit backlogs, and projects that involve implementation of the Prison Rape Elimination Act of 2012 (PREA) standards in working with incarcerated victims.

OVW also has added a new paragraph (d) on pass-through administration, based on the Office for Victims of Crime's VOCA Victim Assistance Program Final Rule, which was issued after the OVW proposed rule. Under both the STOP and Victim Assistance Programs, some states administer the program by awarding the funds to an organization such as a state domestic violence or sexual assault coalition and permitting that organization to identify and monitor subgrantees. OVW wishes to be consistent with OVC's regulations regarding this practice.

§ 90.12 Implementation Plans

Section 90.12 implements new requirements for the state planning process added by VAWA 2013. One commenter had an overarching recommendation that this section refer to the statute without any additional detail. The commenter opined that such detail is more appropriate for guidance and ''frequently asked questions'' issued by OVW, rather than regulations. Finally, the commenter maintained that the requirements spelled out in this section are too burdensome for states and not consistent with existing state processes. OVW disagrees. The procedures in this rule are consistent with guidance that OVW previously provided to states and therefore state processes should already align with the rule's requirements. Although the rule does require certain documentation, OVW has determined that this documentation is necessary for OVW to ensure compliance with the detailed statutory requirements that Congress put in place in VAWA 2013. The provisions of this section balance the needs of the state with the complexity of the statute. As discussed below, however, state plans will be due on a four-year cycle instead of a three-year one.

The proposed rule included language in section 90.12(a) incorporating a long-standing OVW practice of allowing states to submit a full implementation plan every three years and then submit updates to the plan in the other two years. Several commenters requested that the plan extend for five years, to cover the period between VAWA reauthorizations, rather than three, to reduce the burden on states. OVW is partially accepting this recommendation by making the plan due every four years, starting with the FY 2017 application. Accordingly, the plan submitted in FY 2017 must cover the years 2017–2020. This will give the states more time to develop their plans each cycle and reduce the burden on states, while ensuring that the plans are updated with reasonable frequency. OVW declines to align the plan cycle with VAWA reauthorizations because OVW cannot know if or when Congress will reauthorize VAWA. Depending on the changes made to the STOP Program statute in a reauthorization, however, a new state plan may not be required due to a reauthorization. For example, if purpose areas are added or changed, the state could develop an update noting whether or not it plans to use the new purpose areas. Because of the longer plan period, the final rule provides in paragraph (b) that consultation is required for updating a plan as well as for developing the full plan. If there are no updates, or only minor changes, then the consultation may be brief.

Paragraphs (b) and (c) of section 90.12 are new to the regulation, but incorporate provisions from 42 U.S.C. 3796gg–1(c)(2) and (i) regarding consultation and coordination. The statute, as amended by VAWA 2013, provides a list of entities that states must consult with during the implementation planning process and requires documentation from members of the planning committee as to their participation in the planning process. OVW must ensure that states consult with all the required entities and fully document such consultation. The final rule strikes a balance between requiring sufficient documentation within the implementation plan and minimizing the burdens on state administrators inherent in providing such documentation.

Section 90.12(b) addresses consultation and coordination with the entities specified in 42 U.S.C. 3796gg–1(c)(2). Paragraph (b)(2) addresses population-specific organizations, representatives from underserved populations, and culturally specific organizations. Two commenters noted that the proposed rule required the inclusion of ''significant underserved or culturally specific populations in the state'' but did not define ''significant.'' OVW declines to define ''significant'' because what significant means will be different for every state. Instead, OVW has inserted language in paragraph (c) that requires states to explain in their implementation plans how they determined which underserved and culturally specific populations to include. OVW also has amended paragraph (b)(2) to provide that states consider, in addition to demographics, barriers to service, including historical lack of access to services, for each population. These commenters noted a similar concern with paragraph (b)(7), which is addressed in the final rule through these change to paragraphs (b)(2) and (c).

Two commenters requested that OVW add language to paragraph (b)(2) with specific recommendations on how states should engage in meaningful outreach, such as having a mailing list with organizations in specific areas, including nonprofit and faith-based organizations, and conducting information sessions beyond regular business hours and in local communities. Although OVW agrees in principle with these suggestions, OVW believes they are too detailed and specific for inclusion in the regulations and more appropriate for technical assistance.

Section 90.12(b)(3) requires consultation with all state and federally recognized tribes in the planning process. One commenter agreed but also noted that there is a need for states to have mechanisms for tribes to participate meaningfully and recommended that OVW require states to document their attempts to reduce barriers to participation by tribes. OVW agrees and has added this to paragraph (c)(2)(iii). Examples of ways that states have successfully reached tribes include tours of the reservations in the state and regional meetings with tribal leaders.

Section 90.12(b)(4) provides that, if possible, states should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process. One commenter noted the value and importance of including survivors in the planning process. Another recommended changing the

provision to reflect that states are ''encouraged'' to include survivors, but also noted concerns that states could recruit and solicit input from survivors in ways that violate survivor confidentiality and autonomy. As a result, OVW has changed the provision to remind states that include survivors in their consultation process that they should address safety and confidentiality concerns. OVW recommends that state STOP administrators work with organizations within their states, such as state coalitions, victim service providers, and culturally and population specific organizations, that may have survivor advisory panels or may be able to assist with recruiting survivors who are interested in providing input regarding the state plan. Survivors do not need to participate in person and their input may be obtained through means such as online or paper surveys, conference calls, or web meetings.

Section 90.12(b)(6) implements the statutory requirement at 42 U.S.C. 3796gg–1(c)(3) that the state coordinate the plan with the plans for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b–1b). Two commenters noted that this coordination can be difficult if the STOP Program administrator does not control the other funding streams. They also noted that the VOCA Assistance state administrator may be better positioned to lead this coordination, as that program disburses substantially more funding. Because each state is structured differently, OVW will give states discretion how to handle this statutory requirement. Some examples include a single meeting with the various state administrators to discuss plan priorities, having a shared planning process, having the different administrators serve on the STOP planning committee, and sharing a draft plan with the other administrators for feedback. If a state chooses to have another administrator, such as the VOCA administrator, lead the processes, it may do that at its discretion.

Section 90.12(c) provides information on how states must document their consultation with the various required entities. The rule requires states to submit to OVW documentation of the extent of each partner's participation, a summary of any significant concerns that were raised during the planning process, and a description of how those concerns were resolved. Paragraph (c) is intended to ensure meaningful collaboration with partners, while minimizing the administrative burden on states. One commenter noted that the term ''checklist'' can be confusing because OVW also uses a checklist of the required plan elements. The commenter recommended changing ''checklist'' to ''documentation of collaboration.'' OVW agrees and has made this change.

OVW received several comments on this section, both expressing support and expressing concerns about the burden on STOP administrators. Some commenters recommended using a certification of compliance with collaboration instead of requiring the documentation. One commenter recommended removing some of the specific details regarding what to retain and instead provide a general requirement for states to document and keep on file a description of the planning process. One commenter noted that the requirement to provide a summary of major concerns is duplicative. However, another commenter specifically supported the level of documentation and the focus on documenting major issues and how they are resolved. After consideration of these diverging views, OVW has determined that the level of documentation required by the rule is necessary for management of the program and is consistent with current practices and OVW guidance. OVW, however, has rewritten this section to clarify what documentation must be retained and what must be submitted as part of the implementation plan. OVW may review the retained documentation as part of monitoring, such as a site visit or where there is a suspicion of noncompliance with the collaboration requirements. Furthermore, by amending section 90.12(a) to require a new plan every four years instead of every three years, OVW has reduced the burden of retaining or submitting this documentation. Also, one commenter noted that requiring participants to fax or email proof of their attendance on calls and webinars is not necessary. OVW agrees and has modified that paragraph accordingly.

Section 90.12(d) implements 42 U.S.C. 3796gg–1(e)(2), which requires states to describe in the implementation plan how they will provide for equitable distribution of funds with certain considerations, such as geographic diversity and meeting the needs of underserved populations. One commenter noted that states must ensure that eligible underserved and culturally specific entities are aware of the funding opportunity. OVW agrees but recognizes that this kind of outreach is needed not just for underserved populations, but for other categories in this paragraph such as different types of geographic areas. Therefore, OVW has added a new paragraph (d)(5) to require that states take steps to ensure that eligible applicants are aware of the STOP Program funding opportunity, including applicants serving different geographic areas and culturally specific and other underserved populations. Another commenter expressed a concern with paragraph (d)(4), which specifies that states must recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and activities for underserved populations are distributed equitably among ''those populations.'' This commenter was concerned that the term ''those populations'' will be seen as limiting the equitable distribution to culturally specific populations under the ten-percent set aside. OVW agrees and has amended paragraph (d)(4) to clarify that it applies to both culturally specific populations and the broader range of underserved populations.

Section 90.12(e) implements 42 U.S.C. 3796gg–1(i)(2)(E). The paragraph allows states the flexibility to identify underserved populations, while requiring a description of why the specific populations were selected. One commenter noted in response to both this paragraph and paragraph (d) that the states must address statewide needs and that the ten-percent set aside is a minimum and not a cap. As discussed above, OVW has made changes to section 90.12(c)(3) that address these concerns. This commenter also requested that OVW include a reminder that states must develop language access plans to ensure that, in distribution of funding, they provide ''meaningful access'' for persons with limited English proficiency. This specific reminder is not needed because it is already required and addressed through other mechanisms, as discussed above in response to a similar comment regarding § 90.4(b)(6). OVW does include language in all its solicitations about language access and use of funds for this purpose. OVW encourages states to use the same or similar language in their solicitations. The 2016 STOP Program solicitation includes the following:

Accommodations and Language Access

Recipients of OVW funds must comply with applicable federal civil rights laws, which, among other things, prohibit discrimination on the basis of disability and national origin. This includes taking reasonable steps to ensure that persons with

limited English proficiency (LEP) have meaningful access to recipients' programs or activities. More information on these obligations is available in the OVW FY 2014 Solicitation Companion Guide and at *www.lep.gov*. Applicants are encouraged to allocate grant funds to support activities that help to ensure individuals with disabilities, Deaf individuals, and persons with limited English proficiency have meaningful and full access to their programs. For example, grant funds can be used to support American Sign Language (ASL) interpreter services, language interpretation and translation services, or the purchase of adaptive equipment.

Applicants proposing to use grant funds to create Web sites, videos, and other materials must ensure that the materials are accessible to persons with disabilities. Grant funds may be allocated for these purposes.

Section 90.12(f) implements 42 U.S.C. 3796gg–1(i)(2)(G), which requires state implementation plans to include goals and objectives for reducing domestic violence-related homicide. This paragraph requires states to include statistics on domestic violence homicide within the state, consult with relevant entities such as law enforcement and victim service providers, and establish specific goals and objectives to reduce homicide, including addressing challenges specific to the state and how the plan can overcome them.

Section 90.12(g) outlines additional content that implementation plans must include. These required elements are designed to help OVW ensure that states meet statutory requirements for the program and to provide a better understanding of how the state plans to allocate its STOP Program funds. One commenter requested that OVW remind states to provide outreach to targeted community groups, which should be translated or interpreted to other languages and broadcast in ethnic media. The need for outreach has been addressed in paragraph (d)(5) as discussed above. Also, as discussed above, the specific reminder about interpretation is unnecessary because it is covered by other laws, regulations, guidance, and resources for grantees.

Paragraph (g)(7), regarding the Prison Rape Elimination Act (PREA), is designed to ensure that states that submit assurances under PREA that they will spend five percent of ''covered funds'' towards compliance with PREA are including such funds in their planning. One commenter noted that there is pending legislation that could separate PREA from STOP. To address this possibility, OVW has added the phrase, ''if applicable'' to paragraph (g)(7). If the legislation passes, it will no longer be applicable, and states will not need to address it. Another commenter opined that, because the decision whether to submit a certification, assurance, or neither under PREA is the responsibility of the governor, it should only be included in the implementation plan if the grantee is using PREA set-aside funds for victim services and has control through direct contracting. OVW agrees in part and disagrees in part. Although it is true that the state STOP administrator does not have control over PREA certification and assurance decisions, the administrator should be aware of the governor's decisions and should be able to report on the use of STOP funds if the state submitted an assurance that it would use five percent of covered funds under STOP towards coming into compliance with PREA. Therefore, OVW has changed the paragraph to note that the state needs to specify whether it submitted a certification, assurance, or neither under PREA, and, if an assurance, how it plans to spend the STOP funds set aside for PREA compliance.

Section 90.12(h) implements a change in VAWA 2013 that makes the implementation plans due at the time of application rather than 180 days after award. One commenter complained that this does not give states enough time to complete the plan and requested 90 days after the award to complete the plan. OVW disagrees because states do not need to wait for the solicitation to write the plan. Since the previous plan was due in 2014, OVW has been encouraging states to work on their 2017 plans. States may use the 2014 solicitation, guidance on the OVW Web page, and this rule to help develop their plans. In addition, if a state is not able to complete their plan by the application deadline, they may submit information on what is needed to complete the plan. If they have not completed the plan by the time the award is issued, the state will still receive the award, but with a condition withholding all the funds until the plan is submitted and approved.

§ 90.13 Forensic Medical Examination Payment Requirement

Section 3796gg–4 of Title 42 requires states to ensure that the state or another governmental entity bears the ''full out-of-pocket'' costs of sexual assault medical forensic examinations. Section 90.13(b) provides a definition of ''full out-of-pocket costs.'' Paragraph (d) clarifies that, if states use victims' personal health insurance to pay for the exams, they must ensure that any expenses not covered by insurance are not billed to the victims, as these would constitute ''out-of-pocket'' costs. Paragraph (e) implements a new provision from VAWA 2013, 42 U.S.C. 3796gg–4(a)(1)(B), which requires states to coordinate with health care providers in the region to notify victims of the availability of forensic examinations.

Two commenters expressed that the victim's insurance should never be billed. In some cases, insurance billing can present a hardship for victims. For example, a victim of spousal rape may not want her husband to find out that she sought a forensic exam. If the victim is forced to submit the claim to her insurance company and she is covered by her husband's insurance, he may receive a statement from the insurance indicating that she received the exam. OVW agrees and strongly discourages the practice of billing a victim's insurance. The statute, however, clearly permits it. *See* 42 U.S.C. 3796gg–4(c) (specifying that states may only use *grant* funds to pay for forensic examinations *if* the examinations are performed by a trained examiner and victims are not required to seek reimbursement from their insurance). OVW, however, has added language to section 90.13(d) to discourage the practice. Another commenter wrote in response to this section as well as sections 90.15 (the provision prohibiting polygraph testing) and 90.16 (regarding fees and costs for criminal charges and protection orders) to request that states be required to provide notice to victims of their rights in relevant languages. Section 90.13(e) (implementing 42 U.S.C. 3796gg–4(1)(B)) already contains a notice requirement regarding rape examination payment. Additional reminders with regard to language access are not needed in this rule because it is covered by the relevant federal civil rights laws and regulations. Finally, although OVW encourages states to inform victims about the prohibition on polygraph testing and the provisions relating to costs for criminal charges and protection orders, OVW declines to impose a notice requirement, because Congress included it in the rape examination payment certification but did not in the certifications regarding polygraph testing and costs for criminal charges and protection orders.

§ 90.14 Judicial Notification Requirement

Section 90.14 implements the requirements of 42 U.S.C. 3796gg–4(e), which provides that states and units of local government are not entitled to funds unless they certify that their judicial administrative policies and practices include notification to domestic violence offenders of relevant federal, state, and local firearms prohibitions that might affect them. This requirement was added by VAWA 2005.

One commenter stated that the judicial notice should be in the language of the offender and that funding should be reduced if it is not. OVW declines to make this change because, as discussed above, language access is addressed by existing civil rights laws and regulations.

§ 90.15 Costs for Criminal Charges and Protection Orders

Section 90.15 implements the requirements of 42 U.S.C. 3796gg–5, which provides that states, tribes, and units of local government are not entitled to funds unless they certify that victims of domestic violence, dating violence, sexual assault, or stalking are not charged certain costs associated with criminal prosecution or protection orders. These requirements were amended by VAWA 2000 and VAWA 2013. No comments were received on this section other than the comment regarding notice discussed above under § 90.13.

§ 90.16 Polygraph Testing Prohibition

Section 90.16 implements 42 U.S.C. 3796gg–8, which provides that, to be eligible for STOP Program funding, states, tribes, and units of local government must certify that their laws, policies, and practices ensure that law enforcement officers, prosecutors, and other government officials do not ask or require sexual assault victims to submit to a polygraph examination or other truth telling device as a condition for investigating the offense. These requirements were added by VAWA 2005. OVW received two comments on this section, in addition to the comment regarding notice discussed above under § 90.13. The first recommended language to clarify that state-level police and prosecutors must comply with this requirement. OVW has not accepted this suggestion, because although it is correct that the state must comply, OVW believes the language of the proposed rule is clear. The second commenter recommended that polygraphing be prohibited outright. OVW lacks the authority to do this because the statute (and therefore the regulation) only prohibits polygraphing as a condition of proceeding with the investigation of the offense. OVW, however, has changed ''restricting'' in paragraph (a) to ''prohibiting'' to track the language of the statute. OVW also agrees that polygraphing of victims should not be done as a routine matter. The Attorney General Guidelines for Victim and Witness Assistance (2011 Edition, *https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf*) provides that investigating agents may request victims to take a polygraph only in extraordinary circumstances and only with the concurrence of the Special Agent in Charge or the Supervisory Assistant United States Attorney. The guidelines further provide that all reasonable alternative investigatory methods should be exhausted before requesting or administering a sexual assault victim polygraph examination. OVW recommends that states and local jurisdictions adopt similar guidelines to limit the improper use of polygraph tests on sexual assault victims.

§ 90.17 Subgranting of Funds

Section 90.17(a) describes the type of entities that may receive subgrants from the state (state agencies and offices, courts, local governments, public agencies, tribal governments, victim service providers, community-based organizations, and legal services programs).

Section 90.17(b) allows states to use up to ten percent of each allocation category (law enforcement, prosecution, victim services, courts, and discretionary) to support the state's administrative costs. Examples of such costs include the salary and benefits of staff who administer the program and costs of conducting peer review. This paragraph codifies a long-standing OVW policy regarding state administrative costs. OVW added language from the OVC VOCA Assistance Program Rule regarding the use of funds for administrative costs. The programs often have the same administrators, so it is important that the regulations governing the two programs are consistent.

§ 90.18 Matching Funds

Section 90.18 implements the match provisions of 42 U.S.C. 3796gg–1(f) and 13925(b)(1). VAWA 2005 provided that match could not be required for subgrants to tribes, territories, or victim service providers. It also authorized a waiver of match for states that have ''adequately demonstrated [their] financial need.'' 42 U.S.C. 13925(b)(1). VAWA 2013 further specified that the costs of subgrants for victim services or tribes would not count toward the total amount of the STOP award in calculating match. 42 U.S.C. 3796gg–1(f).

Section 90.18(a) states the match requirement in general and reflects that the match requirement does not apply to territories.

Section 90.18(b) allows for in-kind match, consistent with 2 CFR 200.306, and provides information on calculating the value of in-kind match.

Section 90.18(c) provides that states may not require match for subgrants for Indian tribes or victim service providers. This is consistent with 42 U.S.C. 13925(b)(1), as added by VAWA 2005.

Section 90.18(d) implements the waiver provisions of 42 U.S.C. 13925(b)(1), as added by VAWA 2005. In developing the criteria for waiver, OVW balanced the importance of state and local support for the efforts funded under the STOP Program with the need for waiver where there is demonstrated financial need. The paragraph ensures that the financial need identified by the state is specifically tied to funding for violence against women programs. For example, if a state has had across-the-board budget cuts, it would need to show how those cuts have impacted state funding for violence against women programs (and hence, its ability to provide matching funds). In most cases, a state would receive a partial waiver based on the specific impact of the cuts. For example, if the state had a 20 percent reduction in violence against women funding, then it would receive a 20 percent waiver. The 20 percent cut should leave the state with 80 percent of funds that could still be used toward match. In most cases, the states pass the match on to subgrantees, except for Indian tribes and victim service providers. In cases of awards to Indian tribes or awards to victim service providers for victim services purposes, as opposed to another purpose, such as law enforcement training, the state is exempted from the match requirement.

Section 90.18(e) provides that matching funds must be used for the same purposes as the federal funds and must be tracked for accountability purposes.

OVW received one comment on section 90.18. The commenter was seeking clarification that subgrants to victim service providers that are either awarded from the discretionary allocation or from funds that were returned from subgrantees under other allocations are exempt from match. OVW agrees and has amended paragraph (a) in the final rule to clarify that funds awarded under these two scenarios are excluded from the total award amount for purposes of calculating match.

§ 90.19 Application Content

Section 90.19 provides that states must apply for STOP Program funding using an annual solicitation issued by OVW. VAWA 2013 streamlined the application process by including most information and documentation in the implementation plan, but also requiring

the plan to be submitted at the time of application. No comments were received on this section.

§ 90.21 Evaluation

Section 90.21 encourages states to have plans for evaluating the impact and effectiveness of their projects and requires them to cooperate with federally-sponsored evaluations of their projects. No comments were received on this section.

§ 90.22 Review of State Applications

Section 90.22 provides the statutory basis for review of state applications and implements the Single Point of Contact requirement of Executive Order 12372 (Intergovernmental Review of Federal Programs). No comments were received on this section.

§ 90.23 Annual Grantee and Subgrantee Reporting

Section 90.23 describes the annual reporting requirement for the program. Subgrantees submit annual progress reports to the state, which then forwards them to OVW, or as otherwise directed by OVW. States also must submit an annual progress report. Information on progress reports, along with the forms and instructions, are available at *http://muskie.usm.maine.edu/vawamei/stopformulamain.htm.* OVW received one comment on this section. The commenter was concerned that the current annual reports are time consuming, expensive, and intrusive to survivors and recommended that OVW consider whether the reporting process can be simplified. OVW is considering ways to improve the progress reporting process. Under the current process, it is expected that grantees and subgrantees will determine in some cases that, under the circumstances, it is not appropriate to ask a victim for certain information. The grantee or subgrantee only needs to report demographic information to the extent that it can be obtained in the course of providing victim-centered services, and there is generally an ''unknown'' category they can use, if needed. The information generated from the progress reports is used for a report to Congress, which highlights the accomplishments of the program, and also has other valuable uses. For example, progress reports are used by both OVW and states for monitoring purposes, and data from the progress reports may be used at the state and national level for identifying trends, promising practices, and areas of need.

§ 90.24 Activities That May Compromise Victim Safety and Recovery

Section 90.24 provides that grant funds may not be used to support activities that compromise victim safety and recovery. This section is based on the overall purpose of VAWA to enhance victim safety. Specific examples of such activities are included in the STOP Program solicitation each year and in special conditions attached to each OVW grant award. For example, past solicitations explained that such unsafe activities include procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or gender of their children. No comments were received on this section.

§ 90.25 Reallocation of Funds

Section 90.25 implements a new provision from VAWA 2013, 42 U.S.C. 3796gg–1(j), which allows states to reallocate funds in the law enforcement, prosecution, courts, and victim services (including culturally specific services) allocation categories if they did not receive ''sufficient eligible applications.'' The section defines an ''eligible'' application and provides the information that states must maintain on file to document a lack of sufficient eligible applications. The section ensures that states conduct sufficient outreach to the eligible category of subgrantees before reallocating the funds. One commenter noted that, while they generally agree with the provision, they request more detail on what is needed for a state to be allowed to reallocate funds to another category. Another commenter specifically stated that, if there have been insufficient applications in the culturally specific category, the state should also provide documentation as to whether there were applicants that applied but failed to qualify and if the state reached out to any applicants that failed to apply. OVW agrees with these suggestions but has concluded that they apply not just to the culturally specific category, but to all of the categories. OVW has added a requirement regarding additional documentation on applications that were unfunded for all of the categories (*i.e.,* law enforcement, courts, victim services, prosecution, and culturally-specific) and reorganized the section for better clarity.

IV. Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b). General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f) because it is not likely to: (1) Have an annual effect on the economy of $100 million or more; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues.

(1) The rule's impact is limited to OVW grant funds. It does not change the economic impact of the grant funds and will impose very few economic costs as discussed below.

(2) The Department of Health and Human Services (HHS) has a similar program under the Family Violence Prevention and Services Act (FVPSA), which uses some of the same definitions and a similar confidentiality provision. OVW and the HHS FVPSA office coordinate to ensure consistency in implementation of programs.

(3) The requirements in the rule are statutory and apply only to OVW grantees. In some cases, OVW has added some additional specificity to clarify the statutory requirements. The rule provides details on what information the states must provide as ''documentation,'' but does not impose new requirements.

(4) This rule does not raise any novel legal or policy issues.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize net benefits. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits. In most cases, the rule simply clarifies the statutory requirements, such as providing definitions, which would not have any cost or might reduce costs by providing administrators with clear guidance.

OVW provides the following analysis of the most noteworthy costs, benefits, and alternative choices.

Subpart A. In general, most of this subpart comes from the statute. OVW developed all of these provisions to answer questions received regularly from grantees and provide greater clarity for grantees and save them the time and effort of analyzing the requirements and seeking further guidance from OVW staff. Under this final rule, a victim service component of a larger organization, agency, or government will need a victim release to share identifying victim information with other divisions or leadership of the organization, agency or government. The use of the release will increase the degree of control that the victim has over his/her information, which is widely considered a best practice in the violence against women field. The cost of the rule is the time and administrative burden in executing and tracking the release. This cost cannot be quantified, however, because the discussion of release with the victim would take place in the context of a larger conversation between the victim and the service provider about options for the victim and next steps. OVW considered whether to prevent the release of information about deceased victims in the context of fatality reviews, out of consideration for surviving family members. OVW found a balance that allows for release but also requires the fatality review to attempt to get permission from an authorized representative and surviving minor children (and/or guardians of such) and limits the release to information necessary for the fatality review.

Subpart B. In general, changes to subpart B reflect a balance between the burden on the state administrators and the need to ensure compliance with the statute. The relevant statute requires state implementation plans that must identify how the state will use STOP funds and meet certain statutory requirements. OVW opted to require full plans only every four years to reduce the burden on states in developing these plans. In the other years, states only submit updates to their plans.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The OVW, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: Except for the match provisions in § 90.18, the direct economic impact is limited to the OVW's appropriated funds. For more information on economic impact, please see above.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule will not result in substantial direct increased costs to Indian tribal governments. The definitions and confidentiality provisions of the rule will impact grantees that are tribes. OVW currently has 351 active awards to 226 tribes and tribal organizations, for a total of over $182 million. As discussed above, any financial costs imposed by the rule are minimal.

In addition, although a small number of tribes are subgrantees of the STOP Program, discussed in subpart B, the requirements of the rule are imposed on grantees, not subgrantees. The one provision in subpart B that will have a direct effect on tribes is § 90.12(b)(3), which implements the statutory requirement that states consult with ''tribal governments in those States with State or federally recognized Indian tribes.'' 42 U.S.C. 3796gg–1(c)(2)(F). The rule requires states to invite all state or federally recognized tribes in the state to participate in the planning process. This approach was recommended by tribal participants in the tribal listening session and at OVW's annual government-to-government tribal consultations in 2013 and 2014.

As discussed above, OVW included regulatory implementation of statutory changes to the STOP Program as a topic at its annual tribal consultations in 2013 and 2014. At the 2013 consultation, tribal leaders were asked for testimony on terms that should be defined in the regulations, additional entities that states should consult with in developing their implementation plans, how states should document the participation of planning committee members, and how states should consult with tribes, among other specific questions. The questions presented at the 2014 consultation included how states might better consult with tribes during STOP implementation planning, and how states should include tribes in the equitable distribution of funds for underserved populations and culturally specific services. At both consultations, tribal leaders emphasized the importance of states engaging in meaningful consultation with all tribes in their state. Tribal leaders noted that such consultation should involve a cooperative decision-making process designed to reach consensus before a decision is made or action is taken, and that effective consultation leads to an implementation plan that takes into account the needs of tribes. Tribal leaders also pointed out that a state's failure to consult with tribes can prevent tribes from accessing STOP funds or even being aware that they are available. Finally, testimony at the tribal consultations raised concerns about states asking tribal shelters to volunteer to provide matching funds in order to receive STOP subgrant funding.

Unfunded Mandates Reform 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 $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 90

Grant programs; Judicial administration.

For the reasons set forth in the preamble, the Office on Violence Against Women amends 28 CFR part 90 as follows:

PART 90—VIOLENCE AGAINST WOMEN

■ 1. The authority for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3796gg *et seq.;* 42 U.S.C. 3796hh *et seq.,* 42 U.S.C. 13925

Subpart A—General Provisions

■ 2. Section 90.1 is revised to read as follows:

§ 90.1 General

(a) This part implements certain provisions of the Violence Against Women Act (VAWA), and subsequent legislation as follows:

(1) The Violence Against Women Act (VAWA), Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 (Sept. 13, 1994);

(2) The Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386 (Oct. 28, 2000);

(3) The Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (Nov. 2, 2002);

(4) The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162 (January 5, 2006); and,

(5) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4 (Mar. 7, 2013).

(b) Subpart B of this part defines program eligibility criteria and sets forth requirements for application for and administration of formula grants to States to combat violent crimes against women. This program is codified at 42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8.

(c) Subpart C of this part was removed on September 9, 2013.

(d) Subpart D of this part defines program eligibility criteria and sets forth requirements for the discretionary Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(e) Subpart A of this part applies to all grants made by OVW and subgrants made under the STOP Violence Against Women Formula Program (STOP Program) and the Sexual Assault Services Formula Grant Program after the effective date of this rule. Subpart B of this part applies to all STOP Program grants issued by OVW after the effective date of the rule and to all subgrants issued by states under the STOP Program after the effective date of the rule, even if the underlying grant was issued by OVW prior to the effective date of the rule.

■ 3. Section 90.2 is revised to read as follows:

§ 90.2 Definitions

(a) In addition to the definitions in this section, the definitions in 42 U.S.C. 13925(a) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) The term ''community-based program'' has the meaning given the term ''community-based organization'' in 42 U.S.C. 13925(a).

(c) The term ''forensic medical examination'' means an examination provided to a victim of sexual assault by medical personnel to gather evidence of a sexual assault in a manner suitable for use in a court of law.

(1) The examination should include at a minimum:

(i) Gathering information from the patient for the forensic medical history;

(ii) Head-to-toe examination of the patient;

(iii) Documentation of biological and physical findings; and

(iv) Collection of evidence from the patient.

(2) Any costs associated with the items listed in paragraph (c)(1) of this section, such as equipment or supplies, are considered part of the ''forensic medical examination.''

(3) The inclusion of additional procedures (*e.g.,* testing for sexually transmitted diseases) may be determined by the State, Indian tribal government, or unit of local government in accordance with its current laws, policies, and practices.

(d) The term ''prevention'' includes both primary and secondary prevention efforts. ''Primary prevention'' means strategies, programming, and activities to stop both first-time perpetration and first-time victimization. Primary prevention is stopping domestic violence, dating violence, sexual assault, and stalking before they occur. ''Secondary prevention'' is identifying risk factors or problems that may lead to future domestic violence, dating violence, sexual assault, or stalking and taking the necessary actions to eliminate the risk factors and the potential problem. ''Prevention'' is distinguished from ''outreach,'' which has the goal of informing victims and potential victims about available services.

(e) The term ''prosecution'' means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus (such as governmental victim services programs). Public agencies that provide prosecution support services, such as overseeing or participating in Statewide or multi-jurisdictional domestic violence, dating violence, sexual assault, or stalking task forces, conducting training for State, tribal, or local prosecutors or enforcing victim compensation and domestic violence, dating violence, sexual assault, or stalking-related restraining orders also fall within the meaning of ''prosecution'' for purposes of this definition.

(f) The term ''public agency'' has the meaning provided in 42 U.S.C. 3791.

(g) For the purpose of this part, a ''unit of local government'' is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State. The following are not considered units of local government for purposes of this part:

(1) Police departments;

(2) Pre-trial service agencies;

(3) District or city attorneys' offices;

(4) Sheriffs' departments;

(5) Probation and parole departments;

(6) Shelters;

(7) Nonprofit, nongovernmental victim service agencies including faith-based or community-based organizations; and

(8) Universities.

(h) The term ''victim services division or component of an organization, agency, or government'' refers to a division within a larger organization, agency, or government, where the division has as its primary purpose to assist or advocate for domestic violence, dating violence, sexual assault, or stalking victims and has a documented history of work concerning such victims.

■ 4. Section 90.4 is added to subpart A to read as follows:

§ 90.4 Grant conditions.

(a) *Applicability.* In addition to the grant conditions in paragraphs (b) and (c) of this section, the grant conditions in 42 U.S.C. 13925(b) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) *Nondisclosure of confidential or private information*—(1) *In general.* In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families, grantees and subgrantees under this part shall protect the confidentiality and privacy of persons receiving services.

(2) *Nondisclosure.* (i) Subject to paragraph (b)(3) of this section, grantees and subgrantees shall not disclose any

personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected.

(ii) This paragraph applies whether the information is being requested for a Department of Justice grant program or another Federal agency, State, tribal, or territorial grant program. This paragraph also limits disclosures by subgrantees to grantees, including disclosures to Statewide or regional databases.

(iii) This paragraph also applies to disclosures from the victim services divisions or components of an organization, agency, or government to other non-victim service divisions within an organization, agency, or government. It also applies to disclosures from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (*e.g.,* executive director or chief executive). Such executives shall have access without releases only in extraordinary and rare circumstances. Such circumstances do not include routine monitoring and supervision.

(3) *Release.* (i) Personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section may not be released except under the following circumstances:

(A) The victim signs a release as provided in paragraph (b)(3)(ii) of this section;

(B) Release is compelled by statutory mandate, which includes mandatory child abuse reporting laws; or

(C) Release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.

(ii) Victim releases must meet the following criteria—

(A) Releases must be written, informed, and reasonably time-limited. Grantees and subgrantees may not use a blanket release and must specify the scope and limited circumstances of any disclosure. At a minimum, grantees and subgrantees must: Discuss with the victim why the information might be shared, who would have access to the information, and what information could be shared under the release; reach agreement with the victim about what information would be shared and with whom; and record the agreement about the scope of the release. A release must specify the duration for which information may be shared. The reasonableness of this time period will depend on the specific situation.

(B) Grantees and subgrantees may not require consent to release of information as a condition of service.

(C) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person and has a court-appointed guardian. Except as provided in paragraph (b)(3)(ii)(D) of this section, in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian; in the case of a legally incapacitated person, it must be signed by a legally-appointed guardian. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor. If a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate.

(D) If the minor or person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may consent to release information without additional consent.

(iii) If the release is compelled by statutory or court mandate, grantees and subgrantees must make reasonable efforts to notify victims affected by the disclosure and take steps necessary to protect the privacy and safety of the affected persons.

(4) *Fatality reviews.* Grantees and subgrantees may share personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section about deceased victims being sought for a fatality review to the extent permitted by their jurisdiction's law and only if the following conditions are met:

(i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability;

(ii) The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;

(iii) The grantee or subgrantee makes a reasonable effort to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and

(iv) The information released is limited to that which is necessary for the purposes of the fatality review.

(5) *Inadvertent release.* Grantees and subgrantees are responsible for taking reasonable efforts to prevent inadvertent releases of personally identifying information or individual information that is collected as described in paragraph (b)(2) of this section.

(6) *Confidentiality assessment and assurances.* Grantees and subgrantees are required to document their compliance with the requirements of this paragraph. All applicants for Office on Violence Against Women funding are required to submit a signed acknowledgement form, indicating that they have notice that, if awarded funds, they will be required to comply with the provisions of this paragraph, will mandate that subgrantees, if any, comply with this provision, and will create and maintain documentation of compliance, such as policies and procedures for release of victim information, and will mandate that subgrantees, if any, will do so as well.

(c) *Victim eligibility for services.* Victim eligibility for direct services is not dependent on the victim's immigration status.

(d) *Reports.* An entity receiving a grant under this part shall submit to the Office on Violence Against Women reports detailing the activities undertaken with the grant funds. These reports must comply with the requirements set forth in 2 CFR 200.328 and provide any additional information that the Office on Violence Against Women requires.

■ 5. Subpart B is revised to read as follows:

Subpart B—The STOP (Services * Training * Officers * Prosecutors) Violence Against Women Formula Grant Program

Sec.

90.10 STOP (Services * Training * Officers * Prosecutors) Violence Against Women Formula Grant Program—general.
90.11 State office.
90.12 Implementation plans.
90.13 Forensic medical examination payment requirement.
90.14 Judicial notification requirement.
90.15 Costs for criminal charges and protection orders.
90.16 Polygraph testing prohibition.
90.17 Subgranting of funds.
90.18 Matching funds.
90.19 Application content.
90.21 Evaluation.
90.22 Review of State applications.
90.23 Annual grantee and subgrantee reporting.
90.24 Activities that may compromise victim safety and recovery.
90.25 Reallocation of funds.

§ 90.10 STOP (Services * Training * Officers * Prosecutors) Violence Against Women Formula Grant Program—general.

The purposes, criteria, and requirements for the STOP Violence Against Women Formula Grant Program are established by 42 U.S.C. 3796gg *et seq.* Eligible applicants for the program are the 50 States, American Samoa, Guam, Puerto Rico, Northern Mariana Islands, U.S. Virgin Islands, and the District of Columbia, hereinafter referred to as ''States.''

§ 90.11 State office.

(a) *Statewide plan and application.* The chief executive of each participating State shall designate a State office for the purposes of:

(1) Certifying qualifications for funding under this program;

(2) Developing a Statewide plan for implementation of the STOP Violence Against Women Formula Grants as described in § 90.12; and

(3) Preparing an application to receive funds under this program.

(b) *Administration and fund disbursement.* In addition to the duties specified by paragraph (a) of this section, the State office shall administer funds received under this program, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

(c) *Allocation requirement.* (1) The State office shall allocate funds as provided in 42 U.S.C. 3796gg–1(c)(4) to courts and for law enforcement, prosecution, and victim services (including funds that must be awarded to culturally specific community-based organizations).

(2) The State office shall ensure that the allocated funds benefit law enforcement, prosecution and victim services and are awarded to courts and culturally specific community-based organizations. In ensuring that funds benefit the appropriate entities, if funds are not subgranted directly to law enforcement, prosecution, and victim services, the State must require demonstration from the entity to be benefitted in the form of a memorandum of understanding signed by the chief executives of both the entity and the subgrant recipient, stating that the entity supports the proposed project and agrees that it is to the entity's benefit.

(3) Culturally specific allocation: 42 U.S.C. 13925 defines ''culturally specific'' as primarily directed toward racial and ethnic minority groups (as defined in 42 U.S.C. 300u–6(g)). An organization will qualify for funding for the culturally specific allocation if its primary mission is to address the needs of racial and ethnic minority groups or if it has developed a special expertise regarding services to address the demonstrated needs of a particular racial and ethnic minority group. The organization must do more than merely provide services to the targeted group; rather, the organization must provide culturally competent services designed to meet the specific needs of the target population. This allocation requires States to set aside a minimum of ten percent (within the thirty-percent allocation for victim services) of STOP Program funds for culturally specific services, but States are encouraged to provide higher levels of funding to address the needs of racial and ethnic minority groups. States should tailor their subgrant application process to assess the qualifications of applicants for the culturally specific set aside, such as reviewing the mission statement of the applicant, the make-up of the board of directors or steering committee of the applicant (with regard to knowledge and experience with relevant cultural populations and language skills), and the history of the organization.

(4) Sexual assault set aside: As provided in 42 U.S.C. 3796gg–1(c)(5), the State must also award at least 20 percent of the total State award to projects in two or more allocations in 42 U.S.C. 3796gg–1(c)(4) that meaningfully address sexual assault. States should evaluate whether the interventions are tailored to meet the specific needs of sexual assault victims including ensuring that projects funded under the set aside have a legitimate focus on sexual assault and that personnel funded under such projects have sufficient expertise and experience on sexual assault.

(d) *Pass-through administration.* The State office has broad latitude in structuring its administration of the STOP Violence Against Women Formula Grant Program. STOP Program funding may be administered by the State office itself or by other means, including the use of pass-through entities (such as State domestic violence or sexual assault coalitions) to make determinations regarding award distribution and to administer funding. States that opt to use a pass-through entity shall ensure that the total sum of STOP Program funding for administrative and training costs for the State and pass-through entity is within the limit established by § 90.17(b), the reporting of activities at the subgrantee level is equivalent to what would be provided if the State were directly overseeing sub-awards, and an effective system of monitoring sub-awards is used. States shall report on the work of the pass-through entity in such form and manner as OVW may specify from time to time.

§ 90.12 Implementation plans.

(a) *In general.* Each State must submit a plan describing its identified goals under this program and how the funds will be used to accomplish those goals. The plan must include all of the elements specified in 42 U.S.C. 3796gg–1(i). The plan will cover a four-year period. In years two through four of the plan, each State must submit information on any updates or changes to the plan, as well as updated demographic information.

(b) *Consultation and coordination.* In developing and updating this plan, a State must consult and coordinate with the entities specified in 42 U.S.C. 3796gg–1(c)(2).

(1) This consultation process must include at least one sexual assault victim service provider and one domestic violence victim service provider and may include other victim service providers.

(2) In determining what population specific organizations, representatives from underserved populations, and culturally specific organizations to include in the consultation process, States should consider the demographics of their State as well as barriers to service, including historical lack of access to services, for each population. The consultation process should involve any significant underserved and culturally specific populations in the State, including organizations working with lesbian, gay, bisexual, and transgender (LGBT) people and organizations that focus on people with limited English proficiency. If the State does not have any culturally specific or population specific organizations at the State or local level, the State may use national organizations to collaborate on the plan.

(3) States must invite all State or federally recognized tribes to participate in the planning process. Tribal coalitions and State or regional tribal consortia may help the State reach out to the tribes but cannot be used as a substitute for consultation with all tribes.

(4) States are encouraged to include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process. States that include survivors should address safety and confidentiality considerations in recruiting and consulting with such survivors.

(5) States should include probation and parole entities in the planning process.

(6) As provided in 42 U.S.C. 3796gg–1(c)(3), States must coordinate the plan with the State plan for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b–1b). The purposes of this coordination process are to provide greater diversity of projects funded and leverage efforts across the various funding streams.

(7) Although all of the entities specified in 42 U.S.C. 3796gg–1(c)(2) must be consulted, they do not all need to be on the ''planning committee.'' The planning committee must include the following, at a minimum:

(i) The State domestic violence and sexual assault coalitions as defined by 42 U.S.C. 13925(a)(32) and (33) (or dual coalition)

(ii) A law enforcement entity or State law enforcement organization

(iii) A prosecution entity or State prosecution organization

(iv) A court or the State Administrative Office of the Courts

(v) Representatives from tribes, tribal organizations, or tribal coalitions

(vi) Population specific organizations representing the most significant underserved populations and culturally specific populations in the State other than tribes, which are addressed separately.

(8) The full consultation should include more robust representation than the planning committee from each of the required groups as well as all State and Federally recognized tribes.

(c) *Documentation of consultation.* As part of the implementation plan, the State must either submit or retain documentation of collaboration with all the entities specified in paragraph (b) of this section and in 42 U.S.C. 3796gg–1(c)(2), as provided in this paragraph.

(1) States must retain all of the following documentation but are not required to submit it to OVW as part of the implementation plan:

(i) For in-person meetings, a sign-in sheet with name, title, organization, which of the required entity types (*e.g.,* tribal government, population specific organization, prosecution, court, state coalition) the person is representing, phone number, email address, and signature;

(ii) For online meetings, the web reports or other documentation of who participated in the meeting;

(iii) For phone meetings, documentation of who was on the call, such as a roll call or minutes; and

(iv) For any method of document review that occurred outside the context of a meeting, information such as to whom the draft implementation plan was sent, how it was sent (for example, email versus mail), and who responded.

(2) States must submit all of the following documentation to OVW as part of the implementation plan:

(i) A summary of major concerns that were raised during the planning process and how they were addressed or why they were not addressed, which should be sent to the planning committee along with any draft implementation plan and the final plan;

(ii) Documentation of collaboration for each planning committee member that documents, at a minimum:

(A) Which category the participant represents of the entities listed in 42 U.S.C. 3796gg–1(c)(2), such as law enforcement, state coalition, or population specific organization;

(B) Whether they were informed about meetings;

(C) Whether they attended meetings;

(D) Whether they were given drafts of the implementation plan to review;

(E) Whether they submitted comments on the draft;

(F) Whether they received a copy of the final plan and the summary of major concerns; and

(G) Any significant concerns with the final plan;

(iii) A description of efforts to reach tribes, if applicable;

(iv) An explanation of how the State determined which underserved and culturally specific populations to include.

(d) *Equitable distribution.* The implementation plan must describe, on an annual or four-year basis, how the State, in disbursing monies, will:

(1) Give priority to areas of varying geographic size with the greatest showing of need based on the range and availability of existing domestic violence and sexual assault programs in the population and geographic area to be served in relation to the availability of such programs in other such populations and geographic areas, including Indian reservations;

(2) Determine the amount of subgrants based on the population and geographic area to be served;

(3) Equitably distribute monies on a geographic basis including nonurban and rural areas of various geographic sizes;

(4) Recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and funds for underserved populations are distributed equitably among culturally specific and other underserved populations; and

(5) Take steps to ensure that eligible applicants are aware of the STOP Program funding opportunity, including applicants serving different geographic areas and culturally specific and other underserved populations.

(e) *Underserved populations.* Each State may determine the methods it uses for identifying underserved populations within the State, which may include public hearings, needs assessments, task forces, and United States Census Bureau data. The implementation plan must include details regarding the methods used and the results of those methods. It must also include information on how the State plans to meet the needs of identified underserved populations, including, but not limited to, culturally specific populations, victims who are underserved because of sexual orientation or gender identity, and victims with limited English proficiency.

(f) *Goals and objectives for reducing domestic violence homicide.* As required by 42 U.S.C. 3796gg–1(i)(2)(G), State plans must include goals and objectives for reducing domestic violence homicide.

(1) The plan must include available statistics on the rates of domestic violence homicide within the State.

(2) As part of the State's consultation with law enforcement, prosecution, and victim service providers, the State and these entities should discuss and document the perceived accuracy of these statistics and the best ways to address domestic violence homicide.

(3) The plan must identify specific goals and objectives for reducing domestic violence homicide, based on these discussions, which include challenges specific to the State and how the plan can overcome them.

(g) *Additional contents.* State plans must also include the following:

(1) Demographic information regarding the population of the State derived from the most recent available United States Census Bureau data including population data on race, ethnicity, age, disability, and limited English proficiency.

(2) A description of how the State will reach out to community-based organizations that provide linguistically and culturally specific services.

(3) A description of how the State will address the needs of sexual assault victims, domestic violence victims, dating violence victims, and stalking

victims, as well as how the State will hold offenders who commit each of these crimes accountable.

(4) A description of how the State will ensure that eligible entities are aware of funding opportunities, including projects serving underserved populations as defined by 42 U.S.C. 13925(a).

(5) Information on specific projects the State plans to fund.

(6) An explanation of how the State coordinated the plan as described in paragraph (b)(6) and the impact of that coordination on the contents of the plan.

(7) If applicable, information about whether the State has submitted an assurance, a certification, or neither under the Prison Rape Elimination Act (PREA) standards (28 CFR part 115) and, if an assurance, how the State plans to spend STOP funds set aside for PREA compliance.

(8) A description of how the State will identify and select applicants for subgrant funding, including whether a competitive process will be used.

(h) *Deadline.* State plans will be due at application. If the Office on Violence Against Women determines the submitted plan is incomplete, the State will receive the award, but will not be able to access funding until the plan is completed and approved. The State will have 60 days from the award date to complete the plan. If the State does not complete it in that time, then the funds may be deobligated and the award closed.

§ 90.13 Forensic medical examination payment requirement.

(a) To be eligible for funding under this program, a State must meet the requirements at 42 U.S.C. 3796gg–4(a)(1) with regard to incurring the full out-of-pocket costs of forensic medical examinations for victims of sexual assault.

(b) ''Full out-of-pocket costs'' means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (*e.g.,* the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination). For individuals covered by insurance, full out-of-pocket costs means any costs that the insurer does not pay.

(c) Coverage of the cost of additional procedures (*e.g.,* testing for sexually transmitted diseases) may be determined by the State or governmental entity responsible for paying the costs.

(d) States are strongly discouraged from billing a victim's private insurance and may only do so as a source of payment for the exams if they are not using STOP Program funds to pay for the cost of the exams. In addition, any expenses not covered by the insurer must be covered by the State or other governmental entity and cannot be billed to the victim. This includes any deductibles or denial of claims by the insurer.

(e) The State or other governmental entity responsible for paying the costs of forensic medical exams must coordinate with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims. States can meet this obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations should also consider reaching out to local Indian Health Service facilities.

§ 90.14 Judicial notification requirement.

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg–4(e) with regard to judicial notification to domestic violence offenders of Federal prohibitions on their possession of a firearm or ammunition in 18 U.S.C. 922(g)(8) and (9) and any applicable related Federal, State, or local laws..

(b) A unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–4(e) with respect to its judicial administrative policies and practices.

§ 90.15 Costs for criminal charges and protection orders.

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg–5 with regard to not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

(b) An Indian tribal government, unit of local government, or court shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–5 with respect to its laws, policies, and practices not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

§ 90.16 Polygraph testing prohibition.

(a) For a State to be eligible for funding under this program, the State must meet the requirements of 42 U.S.C. 3796gg–8 with regard to prohibiting polygraph testing of sexual assault victims.

(b) An Indian tribal government or unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–8 with respect to its laws, policies, or practices prohibiting polygraph testing of sexual assault victims.

§ 90.17 Subgranting of funds.

(a) *In general.* Funds granted to qualified States are to be further subgranted by the State to agencies, offices, and programs including, but not limited to, State agencies and offices; State and local courts; units of local government; public agencies; Indian tribal governments; victim service providers; community-based organizations; and legal services programs to carry out programs and projects to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women, and specifically for the purposes listed in 42 U.S.C. 3796gg(b) and according to the allocations specified in 42 U.S.C. 3796gg–1(c)(4) for law enforcement, prosecution, victim services, and courts.

(b) *Administrative costs.* States are allowed to use up to ten percent of the award amount for each allocation category under 42 U.S.C. 3796gg–1(c)(4) (law enforcement, prosecution, courts, victim services, and discretionary) to support the State's administrative costs. Amounts not used for administrative costs should be used to support subgrants.

(1) Funds for administration may be used only for costs directly associated with administering the STOP Program. Where allowable administrative costs are allocable to both the STOP Program and another State program, the STOP Program grant may be charged no more than its proportionate share of such costs.

(2) Costs directly associated with administering the STOP Program generally include the following:

(i) Salaries and benefits of State office staff and consultants to administer and manage the program;

(ii) Training of State office staff, including, but not limited to, travel, registration fees, and other expenses associated with State office staff attendance at technical assistance meetings and conferences relevant to the program;

(iii) Monitoring compliance of STOP Program subgrantees with Federal and State requirements, provision of technical assistance, and evaluation and assessment of program activities, including, but not limited to, travel, mileage, and other associated expenses;

(iv) Reporting and related activities necessary to meet Federal and State requirements;

(v) Program evaluation, including, but not limited to, surveys or studies that measure the effect or outcome of victim services;

(vi) Program audit costs and related activities necessary to meet Federal audit requirements for the STOP Program grant;

(vii) Technology-related costs, generally including for grant management systems, electronic communications systems and platforms (*e.g.,* Web pages and social media), geographic information systems, related equipment (*e.g.,* computers, software, facsimile and copying machines, and TTY/TDDs) and related technology support services necessary for administration of the program;

(viii) Memberships in organizations that support the management and administration of violence against women programs, except if such organizations engage in lobbying, and publications and materials such as curricula, literature, and protocols relevant to the management and administration of the program;

(ix) Strategic planning, including, but not limited to, the development of strategic plans, both service and financial, including conducting surveys and needs assessments;

(x) Coordination and collaboration efforts among relevant Federal, State, and local agencies and organizations to improve victim services;

(xi) Publications, including, but not limited to, developing, purchasing, printing, distributing training materials, victim services directories, brochures, and other relevant publications; and

(xii) General program improvements—enhancing overall State office operations relating to the program and improving the delivery and quality of STOP Program funded services throughout the State.

§ 90.18 Matching funds.

(a) *In general.* Subject to certain exclusions, States are required to provide a 25-percent non-Federal match. This does not apply to territories. This 25-percent match may be cash or in-kind services. States are expected to submit written documentation that identifies the source of the match. Funds awarded to victim service providers for victim services or to tribes are excluded from the total award amount for purposes of calculating match. This includes funds that are awarded under the ''discretionary'' allocation for victim services purposes and funds that are reallocated from other categories to victim services.

(b) *In-kind match.* In-kind match may include donations of expendable equipment; office supplies; workshop or education and training materials; work space; or the monetary value of time contributed by professional and technical personnel and other skilled and unskilled labor, if the services provided are an integral and necessary part of a funded project. Value for in-kind match is guided by 2 CFR 200.306. The value placed on loaned equipment may not exceed its fair rental value. The value placed on donated services must be consistent with the rate of compensation paid for similar work in the organization or the labor market. Fringe benefits may be included in the valuation. Volunteer services must be documented and, to the extent feasible, supported by the same valuation methods used by the recipient organization for its own employees. The value of donated space may not exceed the fair rental value of comparable space, as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality. The value for donated supplies shall be reasonable and not exceed the fair market value at the time of the donation. The basis for determining the value of personal services, materials, equipment, and space must be documented.

(c) *Tribes and victim services providers.* States may not require match to be provided in subgrants for Indian tribes or victim services providers.

(d) *Waiver.* States may petition the Office on Violence Against Women for a waiver of match if they are able to adequately demonstrate financial need.

(1) *State match waiver.* States may apply for full or partial waivers of match by submitting specific documentation of financial need. Documentation must include the following:

(i) The sources of non-Federal funds available to the State for match and the amount available from each source, including in-kind match and match provided by subgrantees or other entities;

(ii) Efforts made by the State to obtain the matching funds, including, if applicable, letters from other State agencies stating that the funds available from such agencies may not be used for match;

(iii) The specific dollar amount or percentage waiver that is requested;

(iv) Cause and extent of the constraints on projected ability to raise violence against women program matching funds and changed circumstances that make past sources of match unavailable; and

(v) If applicable, specific evidence of economic distress, such as documentation of double-digit unemployment rates or designation as a Federal Emergency Management Agency-designated disaster area.

(vi) In a request for a partial waiver of match for a particular allocation, the State could provide letters from the entities under that allocation attesting to their financial hardship.

(2) *Demonstration of ability to provide violence against women matching funds.* The State must demonstrate how the submitted documentation affects the State's ability to provide violence against women matching funds. For example, if a State shows that across the board budget cuts have directly reduced violence against women funding by 20 percent, that State would be considered for a 20 percent waiver, not a full waiver. Reductions in Federal funds are not relevant to State match unless the State can show that the reduced Federal funding directly reduced available State violence against women funds.

(e) *Accountability.* All funds designated as match are restricted to the same uses as the program funds as set forth in 42 U.S.C. 3796gg(b) and must be expended within the grant period. The State must ensure that match is identified in a manner that guarantees its accountability during an audit.

§ 90.19 Application content.

(a) *Format.* Applications from the States for the STOP Program must be submitted as described in the annual solicitation. The Office on Violence Against Women will notify each State office as designated pursuant to § 90.11 when the annual solicitation is available. The solicitation will include guidance on how to prepare and submit an application for grants under this subpart.

(b) *Requirements.* The application shall include all information required under 42 U.S.C. 3796gg–1(d).

§ 90.21 Evaluation.

(a) Recipients of funds under this subpart must agree to cooperate with Federally-sponsored evaluations of their projects.

(b) Recipients of STOP Program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of the program

funded under the STOP Program. Funds may not be used for conducting research or evaluations. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

§ 90.22 Review of State applications.

(a) *General.* The provisions of Part T of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796gg *et seq.,* and of this subpart provide the basis for review and approval or disapproval of State applications and amendments.

(b) *Intergovernmental review.* This program is covered by Executive Order 12372 (Intergovernmental Review of Federal Programs) and implementing regulations at 28 CFR part 30. A copy of the application submitted to the Office on Violence Against Women should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.23 Annual grantee and subgrantee reporting.

Subgrantees shall complete annual progress reports and submit them to the State, which shall review them and submit them to OVW or as otherwise directed. In addition, the State shall complete an annual progress report, including an assessment of whether or not annual goals and objectives were achieved.

§ 90.24 Activities that may compromise victim safety and recovery.

Because of the overall purpose of the STOP Program to enhance victim safety and offender accountability, grant funds may not be used to support activities that compromise victim safety and recovery. The grant program solicitation each year will provide examples of such activities.

§ 90.25 Reallocation of funds.

This section implements 42 U.S.C. 3796gg–1(j), regarding reallocation of funds.

(a) *Returned funds.* A State may reallocate funds returned to the State, within a reasonable amount of time before the award end date.

(b) *Insufficient eligible applications.* A State may also reallocate funds if the State does not receive sufficient eligible applications to award the full funding under the allocations in 42 U.S.C. 3796gg–1(c)(4). An ''eligible'' application is one that is from an eligible entity that has the capacity to perform the proposed services, proposes activities within the scope of the program, and does not propose significant activities that compromise victim safety. States should have the following information on file to document the lack of sufficient eligible applications:

(1) A copy of their solicitation;

(2) Documentation on how the solicitation was distributed, including all outreach efforts to entities from the allocation in question, which entities the State reached out to that did not apply, and, if known, why those entities did not apply;

(3) An explanation of their selection process;

(4) A list of who participated in the selection process (name, title, and employer);

(5) Number of applications that were received for the specific allocation category;

(6) Information about the applications received, such as what agency or organization they were from, how much money they were requesting, and any reasons the applications were not funded;

(7) If applicable, letters from any relevant State-wide body explaining the lack of applications, such as from the State Court Administrator if the State is seeking to reallocate money from courts; and

(8) For the culturally specific allocation, in addition to the items in paragraphs (b)(1) through (7) of this section, demographic statistics of the relevant racial and ethnic minority groups within the State and documentation that the State has reached out to relevant organizations within the State or national organizations.

Dated: November 17, 2016.

Bea Hanson,

Principal Deputy Director.

[FR Doc. 2016–28437 Filed 11–28–16; 8:45 am]

BILLING CODE 4410–FX–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0351; A–1–FRL–9950–92–Region 1]

Air Plan Approval; MA; Decommissioning of Stage II Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Massachusetts Department of Environmental Protection (MassDEP). This revision includes regulatory amendments that allow gasoline dispensing facilities (GDFs) to decommission their Stage II vapor recovery systems as of January 2, 2015, and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance. This revision also includes regulatory amendments that strengthen Massachusetts' requirements for Stage I vapor recovery systems at GDFs. The intended effect of this action is to approve Massachusetts' revised vapor recovery regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on December 29, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2015–0351. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1660, fax number (617) 918–0660, email *garcia.ariel@epa.gov.*

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

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

I. Background and Purpose
II. Response to Comments
III. Final Action

IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 9, 2016 (81 FR 12440), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of Massachusetts' revised regulations 310 Code of Massachusetts Regulations (CMR) 7.00, *Air Pollution Control: Definitions,* 310 CMR 7.24(3), *Distribution of Motor Vehicle Fuel,* 310 CMR 7.24(4), *Motor Vehicle Fuel Tank Trucks,* and 310 CMR 7.24(6), *Dispensing of Motor Vehicle Fuel.* These regulations had been amended to allow the decommissioning of Stage II vapor recovery systems and to strengthen Stage I vapor recovery requirements. The SIP revision was submitted by the MassDEP on May 5, 2015 and also included a demonstration that the decommissioning of Stage II vapor recovery systems at gasoline dispensing facilities is consistent with the Clean Air Act and EPA guidance.

A detailed discussion of Massachusetts' May 5, 2015 SIP revision and EPA's rationale for proposing approval of the SIP revision were provided in the NPR and will not be restated in this notice, except to the extent relevant to our responses to public comments we received on our proposal.

II. Response to Comments

EPA received one comment on the NPR from the Vapor Recovery Association. That comment is summarized below with EPA's response.

Comment: The commenter opposes EPA's proposed approval of Massachusetts' revised Stage II vapor recovery regulation. The commenter believes that eliminating Stage II vapor recovery systems at GDFs and relying solely on Onboard Refueling Vapor Recovery (ORVR) systems located within the vehicles to mitigate refueling emissions will have a negative impact on air quality; cause adverse health impacts to motorists, GDF employees, and members of the community; and result in a severe negative burden in Environmental Justice (EJ) areas in Massachusetts.

Furthermore, the commenter asserts that MassDEP's rationale for decommissioning Stage II vapor recovery systems is not based in science and that it can be mathematically shown that emissions will be increased rather than decreased as a result of the elimination of the Stage II vapor recovery program. However, the commenter did not submit any calculations in support of its claims of the increased emissions, health impacts, and the impacts on EJ areas that the commenter alleges would result from decommissioning Stage II vapor recovery systems at GDFs in Massachusetts. Nor did the commenter specify what specific aspects of the technical analyses conducted by the MassDEP in support of its SIP revision were scientifically unsupportable.

Finally, the commenter believes that in terminating the Massachusetts Stage II vapor recovery program, the MassDEP is not adhering to its mission statement. The commenter also believes that the technical details of fuel storage tank evaporative losses and the alleged significant increase in refueling emissions impacts caused by Massachusetts' removal of Stage II vapor recovery, should have received more thought, analysis and quantification. Again, however, the commenter did not provide specific criticism of the analyses conducted by MassDEP, did not identify any specific aspects of those analyses that the commenter believes are incorrect, and did not assert any alternative specific results or conclusions that the commenter believes would result if the issues were evaluated according to the commenter's unspecified preferred alternative methodology.

Response: EPA disagrees with the Vapor Recovery Association's assertion that there will be significant increased emissions from this action. Massachusetts' May 5, 2015 SIP revision contains a Clean Air Act (CAA) section 110(l) demonstration which was performed in accordance with EPA's final rule determining that ORVR is now in widespread use in the national motor vehicle fleet (77 FR 28770, May 16, 2012) and with EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001, August 7, 2012), hereafter, EPA's August 7, 2012 Guidance (a copy of this guidance has been placed in the public docket for this action).

The Massachusetts rule allows GDFs to decommission Stage II systems as of January 2, 2015, and requires all GDFs equipped with Stage II vapor recovery systems to decommission their Stage II systems by January 2, 2017 (by the end of 2016). As discussed in the NPR, Appendix Table A–1 of EPA's August 7, 2012 Guidance illustrates that by the end of 2016, approximately 85% of the vehicles in the national motor vehicle fleet will be equipped with ORVR. The number of ORVR-equipped vehicles in Massachusetts will likely be even higher due to Massachusetts having a more accelerated motor vehicle fleet turnover when compared to the national motor vehicle fleet.[1] Appendix Table A–1 also illustrates that by the end of 2016, about 89% of the gasoline dispensed nationally will be to ORVR-equipped vehicles, which is also likely to be higher in Massachusetts due to a newer motor vehicle fleet. At that point in time, since a vast majority of Massachusetts vehicles being refueled at gasoline dispensing facilities will be equipped with ORVR systems, the ORVR systems will be controlling the volatile organic compound (VOC) emissions, making Stage II vapor recovery systems a redundant, and potentially incompatible, emissions control technology in Massachusetts. Therefore, removing the Stage II systems is not expected to result in a significant emissions increase, and is actually expected to avoid emissions increases resulting from the incompatibility of some Stage II systems with ORVR controls.

EPA also disagrees with the commenter's assertion that the alleged increase in emissions resulting from the removal of Stage II controls will result in a large increase in adverse health impacts to motorists, GDF employees, and members of the community. EPA's August 7, 2012 Guidance states that ''EPA believes it is reasonable to conclude that the incremental emissions control that Stage II achieves beyond ORVR is *de minimis* if it is less than 10 percent of the area-wide emissions inventory associated with refueling highway motor vehicles.'' As noted in the NPR, Massachusetts appropriately calculated the increase in refueling-associated emissions from the decommissioning of Stage II systems in 2013 as 5.2 percent of that inventory, thus meeting this *de minimis* threshold. As also noted in the NPR, the increase in emissions from Stage II system decommissioning calculated by Massachusetts for 2013 (463 tons of VOC) is only about 0.3 percent of the total anthropogenic VOC emissions in Massachusetts (see EPA's 2011 National Emissions Inventory database Version 2

[1] *Air Program Support for Stage I and Stage II Programs in Massachusetts Final Report,* Eastern Research Group, Inc. and de la Torre-Klausmeier Consulting, December 12, 2012, includes an analysis of vehicle registration data, from the Massachusetts motor vehicle inspection and maintenance program database, illustrating that 76% of motor vehicles inspected in 2011 throughout Massachusetts had ORVR controls. This is much more accelerated than EPA's end of 2011 calendar year national estimate that 67.1% of vehicles in the national motor vehicle fleet were equipped with ORVR.

at *www.epa.gov/ttn/chief/net/2011inventory.html*). Also, as explained in EPA's ORVR rulemaking and in EPA's August 7, 2012 Guidance, these foregone emissions reductions in the near term continue to diminish rapidly over time as ORVR phase-in continues. Therefore, since the *de minimis* criteria discussed in EPA's August 7, 2012 Guidance have been met, EPA is approving Massachusetts' SIP revision.

Furthermore, we note that Massachusetts' revised 310 CMR 7.24(3) regulation also includes new Stage I vapor recovery requirements that will lead to additional emission reductions. Specifically, the regulation requires GDFs to upgrade their Stage I vapor recovery systems to Stage I Enhanced Vapor Recovery (EVR) systems certified by the California Air Resources Board (CARB) or a Stage I vapor recovery system composed of EVR system components (Stage I EVR component systems). The upgrade to Stage I EVR systems or Stage I EVR component systems is required upon facility start-up for facilities beginning operation or installing a fuel storage tank as of January 2, 2015. In addition, as of January 2, 2015, any component of a pre-existing Stage I vapor recovery system that is replaced is required to be replaced with a CARB-certified Stage I EVR component. The Massachusetts regulation further requires that all Stage I systems be CARB-certified Stage I EVR systems or Stage I EVR component systems by January 2, 2022. CARB-certified Stage I EVR systems have been certified to achieve a 98 percent reduction in VOC emissions, as compared to 95 percent for pre-EVR Stage I systems. Thus, when pre-EVR Stage I systems in Massachusetts are replaced with CARB-certified Stage I EVR systems, a greater emission reduction will be achieved. Also, when a component of a pre-EVR Stage I system is replaced with a CARB-certified Stage I EVR component, a somewhat greater reduction is expected to be achieved. These additional reductions will further mitigate any temporary declining emissions increases, which are already *de minimis,* resulting from the removal of Stage II equipment.

Although the commenter generally asserted that MassDEP's analyses and demonstrations were not scientifically supported and that emissions increases could be mathematically shown to result from the removal of Stage II equipment, the commenter provided no information, data, or analytical critiques to support these allegations. The commenter has therefore not raised with reasonable specificity any objections to the underlying analyses and demonstrations supporting EPA's proposed approval of Massachusetts' SIP revision. Consequently, it is not possible for EPA to respond to any specific criticisms that the commenter may have had of the MassDEP's analyses, other than to reiterate that EPA concludes that Massachusetts has conducted its demonstration consistently with EPA's applicable regulations and guidance under the Clean Air Act, as described and evaluated in detail in the NPR. *See,* 81 FR at 12442–43.

Finally, EPA disagrees with the comment that MassDEP is not adhering to its mission statement and that an insufficient amount of thought, analysis, and quantification was provided by MassDEP regarding the impacts of decommissioning Stage II vapor recovery systems in Massachusetts. MassDEP's analysis was conducted in accordance with EPA's ORVR rulemaking and EPA's August 7, 2012 Guidance. In fact, prior to the issuance of EPA's August 7, 2012 Guidance, MassDEP hired independent consultants to conduct an analysis on the emissions impacts of the proposed changes to the Massachusetts Stage I and Stage II vapor recovery programs.[2] One of the noteworthy results presented in the consultant's report was the analysis of whether removal of Stage II controls would result in disproportionate air quality impacts in EJ communities. The consultant's analysis determined that, previous to the April 2012 point at which EPA determined ORVR to have become in widespread use, EJ communities had a slightly lower proportion of ORVR-equipped vehicles (73% of the motor vehicle fleet) than non-EJ communities (77% of the motor vehicle fleet), based on 2011 data in Massachusetts. Although this shows that continuing to operate Stage II systems in Massachusetts EJ communities would not as quickly become redundant and potentially incompatible with ORVR controls as in non-EJ Massachusetts communities, Appendix Table A–1 of EPA's August 7, 2012 Guidance illustrates that only about 67% of the national motor vehicle fleet consisted of ORVR-equipped vehicles in 2011, which is still less than the 73% rate for EJ communities in Massachusetts. The commenter has provided no information indicating that the rate of fleet turnover and the rate at which gasoline is dispensed to ORVR equipped vehicles in Massachusetts EJ communities has subsequently fallen behind the corresponding national rates they were exceeding in 2011. Therefore, in response to the comment, EPA has no reason to believe that the emissions impact of decommissioning Stage II vapor recovery systems in EJ communities in Massachusetts is more significant than that discussed in EPA guidance as an acceptable national average impact.

[2] *Air Program Support for Stage I and Stage II Programs in Massachusetts Final Report,* Eastern Research Group, Inc. and de la Torre-Klausmeier Consulting, December 12, 2012.

III. Final Action

EPA is approving Massachusetts' May 5, 2015 SIP revision. Specifically, EPA is approving, and incorporating into the Massachusetts SIP, the following amended Massachusetts regulations: 310 CMR 7.00, ''Air Pollution Control: Definitions;'' 310 CMR 7.24(3), ''Distribution of Motor Vehicle Fuel;'' 310 CMR 7.24(4), ''Motor Vehicle Fuel Tank Trucks;'' and 310 CMR 7.24(6), ''Dispensing of Motor Vehicle Fuel.'' EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with any applicable requirement concerning National Ambient Air Quality Standards attainment and reasonable further progress or with any other applicable requirement of the Clean Air Act.

Massachusetts' May 5, 2015 SIP revision satisfies the ''comparable measures'' requirement of CAA section 184(b)(2), because as stated in EPA's August 7, 2012 Guidance, ''the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis,* incremental loss of area-wide emissions control.'' As noted in the NPR, Massachusetts' SIP revision meets the *de minimis* criteria outlined in EPA's August 7, 2012 Guidance. In addition, since emissions are *de minimis,* the anti-back sliding requirements of CAA section 110(l) have also been satisfied.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Massachusetts regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *http://www.regulations.gov.*

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the 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 January 30, 2017. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

■ 2. Section 52.1120 is amended by adding paragraph (c)(144) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(144) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 5, 2015.

(i) Incorporation by reference.

(A) Regulation 310 CMR 7.00 entitled ''Air Pollution Control: Definitions,'' the definitions listed below, effective January 2, 2015, as published in the Massachusetts Register, Issue S1277, January 2, 2015:

(*1*) Aboveground Storage Tank or AST;

(*2*) Business Day;

(*3*) California Air Resources Board (or California ARB or CARB);

(*4*) Commence Operations;

(*5*) Emergency Motor Vehicle;

(*6*) Emergency Situation;

(*7*) Executive Order;

(*8*) Minor Modification;

(*9*) Monthly Throughput;

(*10*) Motor Vehicle;

(*11*) Motor Vehicle Fuel;

(*12*) Motor Vehicle Fuel Dispensing Facility;

(*13*) Responsible Official;

(*14*) Routine Maintenance;

(*15*) Stage I CARB Enhanced Vapor Recovery (EVR) Component or EVR;

(*16*) Stage I CARB Enhanced Vapor Recovery (EVR) System;

(*17*) Stage I Component Enhanced Vapor Recovery (EVR) System;

(*18*) Stage I Minor Modification;

(*19*) Stage I Non-Enhanced Vapor Recovery System;

(*20*) Stage I Routine Maintenance;

(*21*) Stage I Substantial Modification;

(*22*) Stage I System;

(*23*) Stage II Minor Modification;

(*24*) Stage II Routine Maintenance;

(*25*) Stage II Substantial Modification;

(*26*) Stage II System;

(*27*) Submerged Filling;

(*28*) Tank Truck;

(*29*) Vacuum Assist System;

(*30*) Vapor;

(*31*) Vapor Balance System;

(*32*) Vapor-Mounted Seal; and

(*33*) Vapor-Tight.

(B) Regulation 310 CMR 7.24, ''Organic Material Storage and Distribution,'' the sections listed below, effective January 2, 2015, as published in the Massachusetts Register, Issue S1277, January 2, 2015:

(*1*) 7.24(3) ''Distribution of Motor Vehicle Fuel'';

(*2*) 7.24(4) ''Motor Vehicle Fuel Tank Trucks''; and

(*3*) 7.24(6) ''Dispensing of Motor Vehicle Fuel''.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental

Protection, dated May 5, 2015, submitting a revision to the Massachusetts State Implementation Plan.

■ 3. In § 52.1167, Table 52.1167 is amended by adding new entries for the existing state citations for 310 CMR 7.00, 310 CMR 7.24(3), 310 CMR 7.24(4), and 310 CMR 7.24(6) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00.	Air Pollution Control: Definitions.	5/5/15	11/29/16	[Insert **Federal Register** citation].	144	Revises definitions that relate to Stage I and Stage II vapor recovery systems.
*	*	*	*	*	*	*
310 CMR 7.24(3).	Distribution of Motor Vehicle Fuel.	5/5/15	11/29/16	[Insert **Federal Register** citation].	144	Revised to require Stage I Enhanced Vapor Recovery systems certified by the California Air Resources Board.
310 CMR 7.24(4).	Motor Vehicle Fuel Tank Trucks.	5/5/15	11/29/16	[Insert **Federal Register** citation].	144	Revised to make minor clarifying amendments.
*	*	*	*	*	*	*
310 CMR 7.24(6).	Dispensing of Motor Vehicle Fuel.	5/5/15	11/29/16	[Insert **Federal Register** citation].	144	Revised to require the decommissioning of Stage II vapor recovery systems.
*	*	*	*	*	*	*

Notes:
1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.

[FR Doc. 2016–28587 Filed 11–28–16; 8:45 am]
BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1109

[Docket No. EP 734]

Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) adopts final rules to implement passenger rail-related dispute resolution provisions under the Fixing America's Surface Transportation Act of 2015 (FAST Act).

DATES: These rules are effective on December 29, 2016.

ADDRESSES: Information or questions regarding these final rules should reference Docket No. EP 734 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245–0386. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Title XI of the FAST Act,[1] entitled ''Passenger Rail Reform and Investment Act of 2015,'' adds to the Board's existing passenger rail adjudicatory responsibilities related to the National Railroad Passenger Corporation (Amtrak). Among other things, Title XI includes new provisions involving cost recovery by Amtrak for Amtrak's operation of ''state-supported routes'' and for the costs allocated to states (including state entities) using the Northeast Corridor rail facilities for their commuter rail operations. As relevant here, Title XI gives the Board jurisdiction to resolve cost allocation and access disputes between Amtrak, the states, and potential non-Amtrak operators of intercity passenger rail service.[2] The FAST Act directs the Board to establish procedures for the resolution of certain of these disputes, ''which may include the provision of professional mediation services.'' 49 U.S.C. 24712(c)(2) and 24905(c)(4).

On July 28, 2016, the Board issued a notice of proposed rulemaking (NPR) (81 FR 51147), seeking comment on proposed rules pursuant to the FAST Act. In the NPR, the Board noted that because it does not have in place a general set of procedural rules to govern the presentation and conduct of proceedings involving passenger rail matters under 49 U.S.C. 24101–24910,[3] which would include contested matters arising under Title XI of the FAST Act, parties seeking to bring contested matters before the Board should be guided by the Board's existing Rules of Practice (49 CFR parts 1100–1129), as applicable. However, the potential to offer ''professional mediation services'' is unique to the authority granted under the FAST Act, and the Board's existing Rules of Practice contain no applicable

[1] Fixing America's Surface Transportation Act of 2015, Public Law 114–94 (signed Dec. 4, 2015).

[2] Currently, Amtrak is the only operator of regularly scheduled, common carrier intercity passenger rail service in the United States. Certain statutory provisions contemplate the possibility, in the future, of other such intercity passenger rail operators. *See, e.g.,* 49 U.S.C. 24711 and 49 U.S.C. 24308(f).

[3] *See* 49 CFR 1100.1 (limiting the scope of the Rules of Practice to matters under title 49, subtitle IV of the United States Code, 49 U.S.C. 10101 *et seq.*).

provisions. Therefore, the Board proposed new regulations to address requests from one or more parties for informal assistance in securing outside professional mediation services pursuant to the FAST Act.

Specifically, the NPR provided that, under a new 49 CFR 1109.5, parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Commission would be permitted to request the Board's assistance in securing outside professional mediation services by submitting a letter to the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). OPAGAC would then contact the requesting party or parties in response to such requests within 14 days of receipt of the request to assist in arranging for professional mediation services.

After careful consideration of the comments received, the Board is promulgating a set of procedural rules that adopt and clarify the provisions of the NPR regarding professional mediation services with respect to certain passenger rail matters under Title XI of the FAST Act.

FAST Act Provisions

The State-Supported Route Committee. Section 11204 of the FAST Act adds a new section to the United States Code: 49 U.S.C. 24712, ''State supported routes operated by Amtrak.'' State-supported routes are intercity rail passenger routes for which operating and capital costs are established and allocated among the states and Amtrak under section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).[4] Under these agreements, Amtrak currently receives funding from states and state-related entities to operate routes under 750 miles in length. New section 24712 establishes a State-Supported Route Committee comprised of Amtrak, the U.S. Department of Transportation/Federal Railroad Administration, and states that subsidize state-supported routes, to implement the cost-allocation methodology previously developed under section 209 of PRIIA through negotiation between Amtrak and the affected states and approved by the Board. *See Amtrak's Pet. for Determination of PRIIA Sec. 209 Cost Methodology,* FD 35571 (STB served Mar. 15, 2012). The Committee may also amend that cost-allocation methodology. Section 24712(c)(1) gives the Board jurisdiction to ''conduct dispute resolution'' pertaining to (1) the Committee's rules and procedures, (2) the invoices to be produced by Amtrak or reports to be produced by Amtrak or the states as described in section 24712(b), and (3) the implementation of or compliance with the cost allocation methodology. Section 24712(c)(2) requires the Board to establish procedures for resolving such disputes, which procedures ''may include provision of professional mediation services.''

The Northeast Corridor Commission. Section 11305 of the FAST Act, which amends 49 U.S.C. 24905, involves the powers and obligations of the Northeast Corridor Commission (NEC Commission), created by Congress in 2008 as part of PRIIA.[5] The NEC Commission is responsible for developing and implementing a standardized policy for determining and allocating costs, revenues, and compensation between Amtrak and the providers of commuter rail passenger transportation on the Northeast Corridor. The FAST Act amends 49 U.S.C. 24905 with respect to the Board's role in resolving disputes between Amtrak and the states in determining compensation for use of the Northeast Corridor in light of the policy approved by the NEC Commission. Under the new subsection, 49 U.S.C. 24905(c)(4), the FAST Act permits the NEC Commission, Amtrak, or public authorities providing commuter rail passenger transportation on the Northeast Corridor to request that the Board conduct dispute resolution if a dispute arises over implementation of, or compliance with, the NEC Commission's cost allocation policy. The new subsection requires the Board to establish procedures for resolving such disputes and provides that those procedures ''may include the provision of professional mediation services.''

Comments

The Board sought comments on the proposed regulations by August 31, 2016, and replies by September 30, 2016. The Board received comments from six parties: California Department of Transportation (Caltrans), Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency (LOSSAN Agency), Amtrak, U.S. Department of Transportation (DOT), San Joaquin Joint Powers Authority (SJJPA), and Capitol Corridor Joint Powers Authority (CCJPA). Amtrak filed a reply.

Caltrans, LOSSAN Agency, SJJPA, and CCJPA (California Entities) all assert that the NPR did not meet the intent and requirement of the FAST Act. They state that the proposed mediation regulation is non-binding and that in order to efficiently resolve disputes, parties should have recourse to a binding mechanism for resolving such disputes. The California Entities suggest that the Board adopt binding arbitration, either before the Board or a third-party arbitrator, as the dispute resolution procedures required under section 24712. They further propose that arbitration be mandatory and that the Board compel arbitration upon request from a State or Amtrak. Lastly, the California Entities suggest that the Board clarify the proposed mediation regulation to address whether the Board will: (1) Maintain a list of mediators; (2) intervene if parties cannot agree to a mediator; (3) establish terms for payment of mediation services; and (4) require parties to participate in mediation.

In its initial comments, Amtrak supports the proposed rule and suggest two clarifications. First, Amtrak asserts that the proposed 49 CFR 1109.5 is ambiguous as to whether the Board's existing mediation rules apply to formally contested matters involving the State-Supported Route Committee (section 209 of PRIIA) or the Northeast Corridor Commission (section 212 of PRIIA). Amtrak suggests adding language which explicitly states, ''mediation procedures under [49 CFR] 1109.1, 1109.2, and 1109.3 are applicable'' to disputes arising under sections 209 or 212 of PRIIA. Second, Amtrak proposes that the Board clarify and expand the procedures following the filing of a request with OPAGAC for securing professional mediation assistance.

In its reply comments, Amtrak responded to the California Entities' requests for the Board to adopt binding arbitration. Amtrak states that arbitration is a voluntary alternate dispute mechanism and that nothing in the FAST Act suggests that the Board should impose arbitration on unwilling parties. Amtrak also argues that the FAST Act does not authorize the Board to delegate its decision-making power to a third-party arbitrator. Lastly, Amtrak argues that binding arbitration is not the best tool for resolving recurring issues in which uniformity among multiple parties is needed.

[4] Public Law 110–432, Section 209; 49 U.S.C. 24101 note.

[5] The NEC Commission was originally established as the Northeast Corridor Infrastructure and Operations Advisory Commission. *See* 49 U.S.C. 24905. It is composed of voting representatives from Amtrak, the U.S. Department of Transportation, and the states comprising the Northeast Corridor (including the District of Columbia).

The Final Rules

After considering the comments received, the Board is adopting final rules, as set forth in the Appendix, for the mediation of passenger rail disputes involving the State-Sponsored Route Committee or the Northeast Corridor Commission. Formal disputes under 49 U.S.C. 24712 and 24905 would be conducted using the Board's existing Rules of Practice as a guide. Parties interested in professional mediation services could seek the Board's informal assistance in securing such services by submitting a letter to OPAGAC. Such informal assistance may be sought even if no party has filed a formal complaint with the Board.

The Board does not agree with the California Entities that section 11204 of the FAST Act authorizes or requires the Board to resolve PRIIA section 209 disputes through binding arbitration. (Neither does any such authorization or requirement appear in FAST Act section 11305, with regard to PRIIA section 212.) While the FAST Act specifically mentions professional mediation services, it does not state or otherwise suggest the use of arbitration as a potential dispute resolution procedure. Further, as Amtrak points out, parties have to agree on arbitration as the method to resolve their disputes. Therefore, provisions for binding arbitration will not be included as part of the regulations adopted here.

CCJPA argues that the plain language of the FAST Act contemplates a more significant role for the Board than providing informal assistance in securing outside professional mediation services—specifically, that the statute contemplates ''dispute resolution'' by the Board itself. (CCJPA Comments 2.) To the extent that CCJPA is arguing that the Board should be involved in ''dispute resolution'' by issuing decisions on disputes arising under the FAST Act, as noted above, parties may bring contested matters under section 11204 or section 11305 of the FAST Act before the Board, guided by the Board's existing Rules of Practice. *See, e.g., Pet. of the Nat'l R.R. Passenger Corp. for Relief Pursuant to 49 U.S.C. 24905,* FD 36048 (STB served Oct. 3, 2016). Alternatively, if CCJPA believes that the Board should engage in dispute resolution by conducting mediation itself and not simply relying on outside professional mediators, as discussed further below, the new rules provide that in cases where a formal complaint is brought under sections 209 or 212 of PRIIA, the Board's existing rules under part 1109 for mediation in Board proceedings would apply.

The California Entities have asked that the Board clarify the proposed rule to address questions about choosing professional mediators, payment of mediation services, and whether participation in mediation would be mandatory. (Caltrans Comments 1; CCJPA Comments 3; SJJPA Comments 2; LOSSAN Agency Comments 2.) Similarly, Amtrak proposes expanding 49 CFR 1109.5 to include specifics such as timing and means of service of the requesting letter on all affected parties, whether parties must consent, the purpose for which OPAGAC will contact the requesting party, and whether and how OPAGAC will contact other affected parties. However, as these rules are intended to provide guidance for *informal* requests, in which parties and OPAGAC retain maximal flexibility in arranging for professional mediation, the Board believes that these issues should not be codified in regulations but left in the first instance to discussions between OPAGAC and the requesting party or parties, following receipt of a request. Accordingly, the Board will not adopt commenters' suggestions to address such specifics.

Amtrak also asks that the rules clarify whether the Board's existing mediation rules apply to contested matters under section 209 or 212 of PRIIA. The Board's proposed rule contemplated that the existing, applicable mediation procedures under 49 CFR part 1109[6] would be available in formal complaint cases brought under sections 209 or 212 of PRIIA. *See* § 1109.5(a) and (b) (noting that requests for assistance in securing professional mediation services are ''[i]n addition to the mediation procedures under this Part 1109 *that are available* following the filing of a complaint . . .'') (emphasis added). We reiterate here that, in cases where a formal complaint is brought under sections 209 or 212 of PRIIA, the preexisting mediation rules under part 1109 shall apply.

In asking for this last clarification, Amtrak states that there may be ambiguity with respect to whether the current provisions of part 1109 apply in a contested matter under PRIIA because part 1109 deals with mediation *after* the filing of a complaint. It is the Board's intention that an informal request for assistance in securing professional mediation services be available not only in instances where there has not been a formal complaint filed, but also during the pendency of a formal complaint case—as long as a motion is filed in that formal proceeding requesting that it be held in abeyance in light of the request for informal assistance. Thus, we have modified the rules proposed in the NPR to include this clarification. *See* § 1109.5(a) and (b).

Paperwork Reduction Act

In the NPR, the Board sought comments under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3). No comments addressing PRA issues were received. Due to a technical omission in the NPR under the PRA, the Board will continue to seek OMB approval for this collection in a separate notice. Any comments received by the Board from that notice will be forwarded to OMB for its review and will be posted under this docket.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' section 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the NPR, the Board certified under 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[7]

[6] Rather than identifying each individual subsection, this language encompasses the existing procedures available to parties after the filing of a complaint in §§ 1109.1, 1109.2, and 1109.3. The mediation rules for rate cases under the stand-alone cost methodology (49 CFR 1109.4) are inapplicable here.

[7] Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Commissioner Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $36,633,119 or less when adjusted for inflation using 2015 data. Class II rail carriers have annual operating revenues of up to $250 million in 1991 dollars or up to $457,913,997 when adjusted for inflation using 2015 data. The Board calculates the

Continued

The Board explained that the proposed regulations would specify procedures related to dispute resolution of certain passenger rail transportation matters by the Board and do not mandate or circumscribe the conduct of small entities. The Board further noted that if a party wishing to utilize the proposed procedures files a complaint, petition, application, or request for dispute resolution, that entity will not encounter any additional burden and that, rather, the procedures are being updated and clarified by the regulations. The NPR was served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

The final rules adopted here make slight modifications to the proposed rule, but the same basis for the Board's certification of the proposed rule applies to the final rules adopted here. The modification adopted in the final rule refines the proposed rule by clarifying the circumstances under which the informal process for seeking Board assistance in pursuing professional mediation services will be available. Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

List of Subjects in 49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

It is ordered:

1. The Board adopts the final rules as set forth in this decision. Notice of the adopted rules will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

3. This decision is effective December 29, 2016.

Decided: November 22, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1109 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1109—USE OF MEDIATION IN BOARD PROCEEDINGS

■ 1. Revise the authority citation for part 1109 to read as follows:

Authority: 5 U.S.C. 571 *et seq.* and 49 U.S.C. 1321(a), 24712(c), and 24905(c).

■ 2. Add § 1109.5 to read as follows:

§ 1109.5 Resolution of certain disputes involving the State Sponsored Route Committee and the Northeast Corridor Commission.

(a) In addition to the mediation procedures under this part that are available following the filing of a complaint in a proceeding before the Board, Amtrak or a State member of the State Supported Route Committee established under 49 U.S.C. 24712 may request that the Board informally assist in securing outside professional mediation services in order to resolve disputes arising from: Implementation of, or compliance with, the cost allocation methodology for State-Supported Routes developed under section 209 of the Passenger Rail Investment and Improvement Act of 2008 or amended under 49 U.S.C. 24712(a)(6); invoices or reports provided under 49 U.S.C. 24712(b); or rules and procedures implemented by the State Supported Route Committee under 49 U.S.C. 24712(a)(4). With respect to a particular dispute, such a request for informal assistance in securing outside professional mediation services may be submitted to the Board:

(1) In the absence of a complaint proceeding before the Board; or

(2) If, while a formal complaint is pending before the Board, a motion is filed in that formal proceeding requesting that it be held in abeyance in light of the request for informal assistance.

(b) In addition to the mediation procedures under this part that are available following the filing of a complaint in a proceeding before the Board, the Northeast Corridor Commission established under 49 U.S.C. 24905, Amtrak, or public authorities providing commuter rail passenger transportation on the Northeast Corridor may request that the Board informally assist in securing outside professional mediation services in order to resolve disputes involving implementation of, or compliance with, the policy developed under 49 U.S.C. 24905(c)(1). With respect to a particular dispute, such a request for informal assistance in securing outside professional mediation services may be submitted to the Board:

(1) In the absence of a complaint proceeding before the Board; or

(2) If, while a formal complaint is pending before the Board, a motion is filed in that formal proceeding requesting that it be held in abeyance in light of the request for informal assistance.

(c) A request for informal Board assistance in securing outside professional mediation services under paragraph (a) or (b) of this section shall be submitted by letter duly authorized to be submitted to the Board by the requesting party. The request letter shall be addressed to the Director of the Board's Office of Public Assistance, Governmental Affairs, and Compliance, and shall include a concise description of the issues for which outside professional mediation services are sought. The Office of Public Assistance, Governmental Affairs, and Compliance shall contact the requesting party in response to such request within 14 days of receipt of the request.

[FR Doc. 2016–28610 Filed 11–28–16; 8:45 am]

BILLING CODE 4915–01–P

revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XF049

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers

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

ACTION: Temporary rule; approval of quota transfers.

SUMMARY: NMFS announces its approval of two transfers of 2016 commercial bluefish quota from the Commonwealth of Virginia to the State of New York. The approval of these transfers complies with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement also informs the public of the revised commercial quotas for Virginia and New York.

DATES: Effective November 28, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281–9112.

SUPPLEMENTARY INFORMATION:

Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can request approval of a transfer of bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfer based on the criteria in § 648.162(e).

Virginia and New York have requested two transfers totaling 80,000 lb (36,287 kg) of bluefish commercial quota from Virginia to New York. Both states have certified that the transfers meet all pertinent state requirements. These quota transfers were requested by New York to ensure that its 2016 quota would not be exceeded. The Regional Administrator has approved these quota transfers based on his determination that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: Virginia, 370,287 lb (167,959 kg); and New York, 877,289 lb (397,932 kg). These quota adjustments revise the quotas specified in the final rule implementing the 2016–2018 Atlantic Bluefish Specifications published on August 4, 2016 (81 FR 51370), and reflect all subsequent commercial bluefish quota transfers completed to date. For information of previous transfers for fishing year 2016 visit: *http://go.usa.gov/xZT8H*.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 22, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28658 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 229
Tuesday, November 29, 2016

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 TRANSPORTATION

Office of the Secretary

14 CFR Part 259

[Docket No. DOT–OST–2016–0208]

RIN 2105–AE53

Refunding Baggage Fees for Delayed Checked Bags

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

ACTION: Extension of comment period on advance notice of proposed rulemaking.

SUMMARY: This action extends the comment period for an Advance Notice of Proposed Rulemaking on refunding baggage fees for delayed checked bags that was published in the **Federal Register** on October 31, 2016. The Department of Transportation is extending the period for persons to submit comments on this rulemaking from November 30, 2016, to January 17, 2017. This extension is in response to a petition by Airlines for America.

DATES: Comments should be filed by January 17, 2017. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2016–0208 by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2016–0208 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in 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://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Clereece Kroha, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *clereece.kroha@dot.gov* (email).

SUPPLEMENTARY INFORMATION: On October 31, 2016, the Department of Transportation published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on how to appropriately implement a statutory requirement in recent legislation for airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner. Specifically, the Department seeks comment on how to define a baggage delay, and the appropriate method for providing the refund for delayed baggage. See 81 FR 75347 (October 31, 2016). Comments on the matters discussed in the ANPRM were to be received 30 days after publication or by November 30, 2016.

On November 15, 2016, we received a petition from Airlines for America (A4A) for a 48-day extension of the comment period for this rulemaking. According to the petition, the extension is appropriate because the ANPRM concerns a requirement that implicates several operational and financial disciplines within the airlines, which will require the assessment of how internal information systems should be re-worked. A4A also indicates that additional time is needed in order to coordinate comments from different member carriers. Further, A4A points out that the current comment period is effectively diminished by the Thanksgiving holiday and an extension into December would be similarly diminished by the Christmas holiday season because many personnel would take extended vacations during these time periods. We received no comments on A4A's petition for extension.

After carefully considering A4A's petition, we have decided to grant the extension of 48 days (January 17, 2017), for the public to comment on the ANPRM.

Issued this 18th day of November, 2016, in Washington, DC.

Judith S. Kaleta,

Deputy General Counsel.

[FR Doc. 2016–28681 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–9X–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3015

[Docket No. RM2017–1; Order No. 3624]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review to determine whether competitive products provide the appropriate minimum contribution to the Postal Service's institutional costs. This advance notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 23, 2017. *Reply Comments are due:* March 9, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
III. Invitation to Comment
IV. Ordering Paragraphs

I. Introduction

The Commission initiates this rulemaking to seek comments and facilitate the Commission's examination of the appropriate minimum contribution to the Postal Service's institutional costs that competitive products must provide, pursuant to 39 U.S.C. 3633(b).

II. Background

The Postal Accountability and Enhancement Act (PAEA) directed the Commission to promulgate regulations to ensure that competitive products, collectively, cover an appropriate share of the Postal Service's institutional costs.[1] In the initial rulemaking setting the appropriate share, the Commission gave considerable weight to the historical contribution made by items categorized as competitive products by the PAEA and set the minimum contribution level for competitive products at 5.5 percent of total institutional costs.[2] The 5.5 percent minimum contribution level was set in line with the competitive products' estimated contribution to institutional costs of 5.4 percent in Fiscal Year (FY) 2005 and 5.7 percent in FY 2006.[3]

The PAEA further directs the Commission to revisit competitive products' minimum contribution level every 5 years and determine whether the institutional cost contribution requirement of 39 U.S.C. 3633(a)(3) should be retained in its current form, modified, or eliminated. *See* 39 U.S.C. 3633(b).

The Commission's first 5-year review occurred in Docket No. RM2012–3.[4] In that docket, the Commission found the minimum contribution level of 5.5 percent for competitive products should be retained.[5]

Five years have passed since the Commission's previous review. As such, the Commission initiates Docket No. RM2017–1 to conduct its second review of the competitive products' appropriate share contribution requirement. The Commission will decide whether 39 CFR 3015.7(c) should be retained in its current form, modified, or eliminated. *See* 39 CFR 3015.7(c).

III. Invitation To Comment

Interested persons are invited to provide written comments to facilitate the Commission in its examination of the appropriateness of the current contribution level for competitive products. Only comments filed in the instant docket will be considered as part of the Commission's review. Comments related to the Commission's 5-year review and competitive products' appropriate share of institutional costs filed in other dockets will not be considered.[6]

Comments are due no later than January 23, 2017. Reply comments are due no later than March 9, 2017. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov*.

Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2017–1, in compliance with 39 U.S.C. 3633(b).

2. Comments are due no later than January 23, 2017. Reply comments are due no later than March 9, 2017.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–28603 Filed 11–28–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006); *See* 39 U.S.C. 3633(a)(3). *See also* 39 CFR 3015.7(c).

[2] Docket No. RM2007–1, Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, ¶¶ 3040–47.

[3] *See* Docket No. RM2007–1, Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at ¶ 3059.

[4] Docket No. RM2012–3, Order Reviewing Competitive Products' Appropriate Share Contributions to Institutional Costs, August 23, 2012 (Order No. 1449).

[5] Order No. 1449 at 24–26. The Commission considered circumstances such as a lack of evidence of a Postal Service competitive advantage; the market share analysis; changes to the market and competitors; historical competitive contribution levels; changes to competitive product offers and the mail mix; and uncertainties raised in the proceeding. *Id.* at 24.

[6] In Docket No. RM2016–2, as part of Proposal Three, UPS petitioned for a review of competitive products' share of institutional costs. Docket No RM2016–2, Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015, at Proposal Three. In its final order in that docket, the Commission declined to consider Proposal Three but stated it will conduct its review as required by section 3633(b). Docket No. RM2016–2, Order No. 3506, Order Concerning United Parcel Service, Inc.'s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0989; FRL–9955–03–Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Revisions to Minor New Source Review Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve severable portions of revisions to the Oklahoma New Source Review (NSR) State Implementation Plan (SIP) submitted by the State of Oklahoma on February 14, 2002 (the February 14, 2002, SIP submittal). This action addresses revisions to the Oklahoma Administrative Code (OAC), Title 252, Chapters 4 and 100, concerning the State's Minor New Source Review air permitting program. Many revisions are administrative in nature and modify redundant or incorrect text within the SIP. The revisions also include renumbered or codified portions of the SIP and new sections that incorporate Federal rules. This rulemaking is being taken in accordance with section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 29, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0989, at *http://www.regulations.gov* or via email to *barrett.richard@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact Rick Barrett, 214–665–7227, *barrett.richard@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett, 214–665–7227, *barrett.richard@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means the EPA.

I. Background
II. Oklahoma's Program for Minor New Source Review
III. EPA's Evaluation of Proposed SIP Revisions
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

The SIP is a set of air pollution regulations, control strategies and technical analyses developed by the state, to ensure that the state meets the National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations. EPA has promulgated implementing regulations for the preparation, adoption, and submittal of SIPs. 40 CFR part 51.

The Clean Air Act at section 110(a)(2)(C) requires states to develop and implement permitting programs (called new source review or NSR) for attainment and nonattainment areas; these NSR programs cover both construction and modification of stationary sources.[1] Each SIP must include legally enforceable procedures that enable the state to determine whether the construction or modification of a stationary source will result in a violation of applicable portions of a control strategy or the interference with the attainment or maintenance of a NAAQS. 40 CFR 51.160. EPA rules set forth detailed requirements for the development of approvable SIP provisions related to the construction of new major stationary sources and major modifications to existing major stationary sources (Major NSR) located in both attainment and nonattainment areas. See, *e.g.,* 40 CFR 51.165–166; however, the requirements for the development of approvable SIP provisions related to the construction and modification of minor sources and minor modifications to existing major stationary sources (Minor NSR) are governed by the more general provisions of 40 CFR 51.160–51.164. EPA has previously approved rules submitted by Oklahoma to implement the Major NSR permitting program, including revisions to rules that are also the subject of this rulemaking, but only as those rules relate to the Major NSR program. See, *e.g.,* 75 FR 72695, November 26, 2010. The next section provides a description of Oklahoma's Minor NSR program and the portions of the February 14, 2002 SIP submittal related to Oklahoma's Minor NSR program that are being acted upon in this proposed rulemaking.

Some severable provisions submitted by the State of Oklahoma on February 14, 2002, are not addressed in today's action. For these provisions, the EPA has severed the submitted provisions from today's proposed rulemaking and will address them at a later date. The table below and the TSD accompanying our rulemaking identifies the submitted provisions that we are proposing to approve and those provisions we are neither evaluating nor acting upon in this proposed rulemaking.

II. Oklahoma's Program for Minor New Source Review

A. Overview—The EPA-approved Oklahoma SIP rules comprising Oklahoma's Minor New Source Review (NSR) program may be found in Regulation 1.4, Air Resources Management Permits Required. A revision to Regulation 1.4 was approved by EPA on November 8, 1999 (64 FR 60683) as part of the Oklahoma visibility SIP. The EPA's November 26, 2010 rulemaking mentioned above also revised Regulation 1.4 of the Oklahoma SIP, but only as it applied to Oklahoma's Major NSR program. See 75 FR 72695 and OAC 252:100–8. Oklahoma's Minor NSR program has been significantly modified and expanded. Elements of Oklahoma's Minor NSR program may now be found in OAC 252:4–1 (General Provisions), OAC 252:4–7 (Environmental Permit Process), Appendix C (Permitting Process Summary), OAC 252:100–5 (Registration, Emission Inventory and Annual Operating Fees), OAC 252:100–7 (Permits for Minor Facilities), Appendix H (De Minimis Facilities) and OAC 252:100–8 (Permits for Part 70 Sources). Those rules before us for action are limited to Minor NSR, and the effect of our rulemaking action, if finalized, will be the removal of Regulation 1.4 from the Oklahoma SIP (except as it applies to Minor NSR permitting under OAC 252:100–8) and the incorporation of specific provisions in the other regulations referenced above into the Oklahoma SIP.

B. Types of Minor NSR Permitting Actions—Oklahoma divides its permitting program between ''Permits for Minor Facilities'' found in OAC 252:100–7, and ''Permits for Part 70 Sources'' which includes Major New Source Review (NSR) Sources, found in OAC 252:100–8. Oklahoma's February 14, 2002 SIP submittal includes OAC 252:100–7 which establishes three types of construction and operating permits for minor facilities: A permit by rule (PBR), a general permit, and an individual permit. The PBR program applies to facilities emitting less than 40 tons per year (TPY) of any regulated pollutant, in an industry group for which a rule has been promulgated. The general permitting program generally applies to facilities emitting between 40 TPY and 100 TPY, in an industry group for which a general permit has been issued. Minor facilities which do not qualify for either of these shall obtain an individual permit. De minimis facilities are those facilities which emit less than 5 TPY and are not required to obtain a permit. As discussed later, Oklahoma's Minor NSR Program also applies to minor modifications of existing major stationary sources, covered by OAC 252:100–8, although we are not proposing action on the Minor NSR-

[1] The definition of ''stationary source'' or ''source'' used herein is equivalent to ODEQ's definition of ''facility,'' as defined at OAC 252:100–1–3.

related rules in OAC 252:100–8 at this time. We also note that OAC:252 100–7 and OAC:252:100–8 have requirements for both construction and operating permits; however, only the construction permitting requirements are required under the CAA and 40 CFR part 51, subpart I.

OAC 252:100–7 also deletes the lower limit of 5 TPY for PBR facilities. This allows facilities subject to New Source Performance Standards (NSPS) with emissions less than 5 TPY to apply for a PBR instead of obtaining an individual permit.

A PBR or general permit may be issued if there are a sufficient number of facilities that have similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements. OAC 252:100–7 Part 9 and OAC 252:100–7 Part 3 outline the criteria required to qualify for these permits: (1) A facility may apply for a PBR if the facility's actual emissions are less than 40 TPY, except hazardous air pollutants (HAPs); the facility does not emit or have the potential to emit 10 TPY or more of any single hazardous air pollutant (HAP) or 25 TPY or more of any combination of HAPs; the ODEQ must have established a permit by rule for the industry; the facility certifies that it will comply with the applicable PBR; and the facility is not operated in conjunction with another facility or source that is subject to air quality permitting; and (2) A minor facility may apply for a general permit if its actual emissions are less than 100 TPY of each regulated air pollutant, except for HAPs; the facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs; and ODEQ has issued a general permit for the industry.

In general, a facility may apply for an individual permit if the facility's actual emissions are less than 100 TPY; the facility does not emit or have the potential to emit 10 TPY or more of any single hazardous air pollutant (HAP) or 25 TPY or more of any combination of HAPs; the facility submits an application form from the ODEQ that provides all data and information required by OAC 252:100–7, such as site information, process description, emission data; and the facility provides information necessary for any required BACT [2] determination, modeling and sampling point data. Individual permits may be applied for even if the facility qualifies for a PBR or a general permit.

C. Permitting Practice and Procedures for Minor Facilities and Minor Revisions—OAC 252:4 (Rules of Practice and Procedure) provides administrative procedures for permit issuance, public notice, and administrative proceedings. OAC 252:4 was adopted to meet the requirements of the Oklahoma Administrative Procedures Act, which requires each State agency to adopt rules describing its organization, method of operation and methods by which the public may obtain or provide information to the agency. These rules also specify the requirements of all formal and informal procedures available, including a description of forms and instructions.

OAC 252:4–1 (General Provisions) includes the practices and procedures of the Environmental Quality Board, Advisory Councils, and the Department of Environmental Quality; the availability of records; and fees for copying, faxing, records search and mail services.

OAC 252:4–7 (Environmental Permit Process) includes Part 1 (The Process) and Part 3 (Air Quality Division Tiers and Time Lines). Representative sections of Part 1 include OAC 252:4–7–2 (Preamble), OAC 252:4–7–13 (Notices) and OAC 252:4–7–15 (Permit issuance or denial). Representative sections of Part 3 include OAC 252:4–7–31 (Air quality time lines) and OAC 252:4–7–33 (Air quality applications—Tier II). OAC 252:4–7 is briefly discussed in more detail below.

The Preamble of OAC 252:4–7 is the introductory section, referencing the Uniform Environmental Permitting Act (UEPA), which requires that DEQ fit licenses, permits, certificates, approvals and registrations into a category, or Tier, established under the uniform environmental permitting rules. The UEPA was created to streamline the permitting process and is located in Oklahoma Statute Title 27A Environment and Natural Resources, Chapter 2: Oklahoma Environmental Quality Code, Sections 1 through 12. Tier I are administrative decisions made by a technical supervisor without public participation, aside from the landowner. Tier II are administrative decisions made by the Division Director with some public participation, including notice to the public, and the opportunity for a public meeting and public comment. Tier III are administrative decisions made by the Executive Director with extensive public participation, *e.g.,* an administrative evidentiary hearing.

The UEPA requires an applicant to give notice. Notice requirements include providing notice to the landowner if the applicant does not own the property, providing a draft notice for approval to DEQ prior to publication, and proof of publication; these are in addition to the notice requirements for permits under the UEPA.

OAC 252:4, Appendix C (Permitting Process Summary) lists the permit processing steps required under each of the three Tiers. As explained below, Tier I covers permitting for minor facilities and minor revisions to facilities.

D. Oklahoma's Permitting Regulations and Revisions Submitted in the February 14, 2002 SIP Submittal—OAC 252:100 (Air Pollution Control) provides, in part, details regarding permitting fees, permitting for minor facilities, permitting for Part 70 Sources, and Prevention of Significant Deterioration (PSD) requirements for major stationary sources.

Oklahoma's February 14, 2002 SIP submittal includes three separate revisions to OAC 252:100–5 (Registration, Emission Inventory and Annual Operating Fees). The first revision to OAC 252:100–5 was adopted by Oklahoma in 1998 and includes requirements to file an emission inventory, formerly located in OAC 252:100–7; requirements to pay annual operating fees, formerly located in OAC 252:100–7 and OAC 252:100–8; and increases to the annual operating fees for minor facilities and non-Part 70 sources. The second revision to OAC 252:100–5 was adopted by Oklahoma in 1999, to modify the base annual operating fee for minor facilities and the annual operating fee for Part 70 sources. The third revision to OAC 252:100–5 was adopted by Oklahoma in 2000, allowing the agency to bill annual operating fees on a flexible schedule and providing edits that define billing dates and identifying how errors will be handled. The changes allow fees to be based on the most recent emissions data and require inventories to be submitted prior to March 1. Miscellaneous edits delete redundant text and clarify text; the revisions are not substantive.

Oklahoma's February 14, 2002 SIP submittal also included several revisions to OAC 252:100–7 (Permits for Minor Facilities). As stated in Part I above, the EPA took no action on OAC 252:100–7 in Oklahoma's 1994 SIP submittal, so Regulation 1.4 remained in the SIP. Today's rulemaking proposes to approve revisions to eliminate Regulation 1.4 from the Oklahoma SIP, with the exception of its applicability to Minor NSR permitting under OAC

[2] *See* definition of ''Best Available Control Technology'' or ''BACT'' at OAC 252:100–7.1.1 as it applies to Oklahoma's Minor NSR program, as compared to the BACT requirements for Oklahoma's Major NSR program at OAC 252:100–8–34, as previously approved by EPA into the Oklahoma SIP (75 FR 72695, November 26, 2010).

252:100–8, while also taking action on identified revisions to OAC 252:100–7 that have been adopted by the State since the EPA's November 8, 1999 rulemaking.

A brief discussion of each of the revisions related to what is now OAC 252:100–7 (hereinafter ''Subchapter 7''), as submitted by Oklahoma on February 14, 2002, for EPA review and approval into the Oklahoma SIP, is presented below. Please note that rules adopted by Oklahoma in the first five revisions listed below are superseded by the last three revisions listed, and they are provided for background information purposes.

The first set of revisions was adopted by Oklahoma effective May 6, 1988, and affect the permitting regulations for new and existing sources of air pollution by increasing construction and operating permit fees for new sources and requiring all permits to be renewable on an annual basis. Renewal fees are assessed annually on all regulated sources.

In 1990, the State Legislature passed the Oklahoma Administrative Procedures Act which mandated a common format for Oklahoma's rules and regulations. The Oklahoma State Department of Health was assigned to Title 310 in the OAC, the Air Pollution Control Rules were assigned to Chapter 200, and each regulation was assigned to a Subchapter. Regulation 1.4 became OAC Title 310, Chapter 200, Subchapter 7 or OAC 310:200–7, and was renamed ''Permits.'' This recodification of Regulation 1.4 to OAC 310:200–7 and change in fee provisions were the second revisions to Subchapter 7, adopted by Oklahoma and effective June 1, 1993.

In 1993, the Oklahoma Air Quality Service became the Air Quality Division (AQD) of the newly created ODEQ. As a result, the Air Pollution Control Rules were recodified to OAC 252:100, adopted by Oklahoma effective May 26, 1994, and submitted by the Governor of Oklahoma to the EPA as a revision to the Oklahoma SIP on May 16, 1994.

The fourth set of revisions to Subchapter 7 was adopted by Oklahoma, effective July 1, 1996, and affects operating time limits for permitted and unpermitted minor sources.

The fifth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 2, 1997, and excludes total suspended particulates (TSP) from being considered as regulated air pollutants for purposes of fee calculation only.

The sixth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 25, 1998. These revisions incorporate a new permit classification system that includes environmental impact, emission levels, and source changes in Oklahoma. Other changes remove requirements for Part 70 and major sources (which are relocated to Subchapter 8); define and exempt ''de minimis'' facilities (less than 5 tons); revise minor permit application fees; and introduce the PBR, general and individual permits.

The seventh set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 11, 1999, and includes modifications to language applicable to de minimis facilities, PBR, and general permits. Additional changes increase various application fees for minor facilities.

The eighth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 1, 2001. Provisions of Regulation 1.4 were moved into OAC 252:100–7–2, requiring applications be signed by the applicant; the signature constitutes an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100; and the applicant's duty to correct any errors or omissions on the application.

In addition to the revisions to OAC 252:100–7 discussed above, Oklahoma's February 14, 2002 SIP submittal includes revisions to OAC 252:100, Subchapter 8 (Permits for Part 70 Sources). The State reasons that it would be difficult to separate the Subchapter 8 rules that are based solely on Title V program requirements from those Subchapter 8 rules that are based upon SIP requirements, without omitting essential requirements. As such, Oklahoma submitted all of the Subchapter 8 rule revisions noted herein for approval into the Oklahoma SIP.

Oklahoma's February 14, 2002 SIP submittal revises OAC 252:100–8, Part 1 (General Provisions), OAC 252:100–8, Part 5 (Permits for Part 70 Sources), OAC 252:100–8, Part 7 (Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas), and OAC 252:100–8, Part 9 (Major Sources Affecting Nonattainment Areas). These sections include general information, including eligibility criteria for general and individual permits; sources subject to the permit requirements and permit contents; administrative requirements, including format, transmission of information, review and petitions; applicability of new sources to NSR requirements; demonstration of best available control technology and evaluation of air quality impact. As stated in Section I discussion above, the EPA's November 26, 2010 rulemaking (75 FR 72695) approved OAC 252:100–8, Parts 7 and 9 as well as OAC 252:100–8, Parts 1 and Part 5 (as they apply to sources subject to the Major NSR program requirements) into the Oklahoma SIP. EPA considers the Minor NSR provisions in Subchapter 8 for Part 70 sources severable from the Subchapter 7 Minor NSR requirements for minor facilities. We also note that additional SIP submittals with Subchapter 8 revisions are currently before the EPA for action. In today's proposal, the EPA is not proposing approval of those portions of OAC 252:100–8, Parts 1 and 5 as they apply to Oklahoma's Minor NSR permitting program; the EPA will address the Minor NSR program aspects of OAC 252: 100–8 in a separate action.

Finally, OAC 252:100, Appendix H (De Minimis Facilities) is referenced in Section 252:100–7–1.1. Appendix H lists the facilities that qualify as De Minimis, such as agricultural (lawn care), woodworking (portable wood chipping operations), office/janitorial, and cleaning/surface preparation (cold degreasing operations).

Additional discussion of the above SIP revisions is located below and also in the Technical Support Document (TSD) which is in the docket for this proposed rule.

III. EPA Evaluation of Proposed SIP Revisions

A. EPA Evaluation of Requirements for Minor NSR—As stated above, the EPA regulations governing the criteria that states must satisfy for EPA SIP approval of regulations specific to Minor NSR programs are contained in 40 CFR Sections 51.160–51.164. More specifically, the provisions of a Minor NSR program must include legally enforceable procedures that enable the permitting authority to determine whether the construction or modification of a source will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. 40 CFR 51.160(a). To accomplish this goal, the state's Minor NSR program must include the means by which the permitting authority will prevent such construction or modification if it would result in a violation of applicable portions of a control strategy or interfere with the attainment or maintenance of a NAAQS. 40 CFR 51.160(b). Other requirements for an approvable Minor NSR program are contained in 40 CFR 51.160(c)–(f) as well as in 40 CFR 51.161–51.164. As discussed in Section

II above, elements of Oklahoma's Minor NSR program may be found in both OAC 252:100–7 (Permits for Minor Facilities) as well as in OAC 252:100–8 (Permits for Part 70 Sources); however, the EPA will not be taking action on the Minor NSR program elements located in OAC 252:100–8 at this time. Regulation 1.4 of the currently approved SIP will continue to apply to the minor NSR program as it applies to sources subject to Part 70 (See OAC 252:100–8).The TSD which accompanies this proposed rulemaking contains a detailed review of Oklahoma's February 14, 2002 SIP submittal and how the submitted regulations being acted upon in this proposed rulemaking meet the requirements for an approvable Minor NSR program. A summary of our evaluation is provided below.

Under the permitting requirements for minor facilities in OAC 252:100–7 Permits for Minor Facilities, no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from ODEQ, except for de minimis facilities.

The provisions in OAC 252:100–7 Permits for Minor Facilities establish both an initial construction permit and a subsequent operating permit. Under OAC 252:100–7–15(b) three types of construction permits are available: A permit by rule (PBR), a general permit, and an individual permit. These provisions allow ODEQ to develop and issue PBR, general, and individual minor source permits. Minor NSR sources may seek authorization under the PBR or general permit, in lieu of an individual permit, if they meet the requirements of the PBR provisions or general permitting program and the specific requirements of each PBR or general permit. Regardless of the type of permit applied for, the applicant must provide specific information which is evaluated by the ODEQ both in the application process and on an ongoing basis. For example, OAC 252:100–7–15(d) requires that all three types of minor construction permits contain provisions that: (1) Require the permittee to comply with all applicable air pollution rules, (2) prohibit the exceedance of ambient air quality standards, and (3) may establish permit conditions and limitations as necessary to assure compliance with all rules. The specific PBR or general permit rule and application form requires that data and information be provided which includes, but is not limited to, process description, emission data, any required BACT [3] determination, modeling and sampling point data. Under OAC 252:100–7–18(d)(1), Operating permit conditions, the emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit. Under OAC 252:100–5–2.1 Emission Inventory, any facility that is a source of air emissions shall submit a complete emission inventory annually, except every 5 years for a PBR with emissions less than 5 tons per year. Therefore, as required by the provisions of Chapter 4 and Chapter 100, the PBR, general and individual permits must contain terms and conditions that assure sources authorized via the construction permit and subsequent operating permit will meet all applicable requirements under the Act (*e.g.,* NSR, NSPS, NESHAP) and will not cause or contribute to an exceedance of the NAAQS. Also, see OAC 252:4–7–32 and OAC 252:100–7–15(d)(2).

As discussed above, the EPA believes that provisions of OAC 252:100–7 satisfy the requirements of 40 CFR 51.160(a) and enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a national ambient air quality standard. Further, these provisions satisfy the requirements of 40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

Based on our evaluation, we propose to find that the severable portions of the Minor NSR program requirements in OAC 252:4–1 (General Provisions), OAC 252:4–7 (Environmental Permit Process), Appendix C (Permitting Process Summary), OAC 252:100–5 (Registration, Emission Inventory and Annual Operating Fees), OAC 252:100–7 (Permits for Minor Facilities) and Appendix H are approvable as meeting CAA requirements for a Minor NSR program. These severable Minor NSR permit provisions provide for the necessary procedures and applicable requirements for approvable Minor NSR programs. Additional details regarding our evaluation are found in the TSD accompanying this proposed rulemaking. The TSD is available in the docket and from the EPA Region 6 office.

B. CAA 110(l) Analysis—Each revision to an implementation plan submitted by a state under the Clean Air Act shall be adopted by such state after reasonable notice and public hearing. ODEQ adopted the proposed revisions after reasonable notice and public hearing. CAA section 110(l) also states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. For purposes of the analysis under CAA section 110(l), we have taken into account the overall effect of the revisions included in this action. Given that these revisions primarily concern recodified portions of the Oklahoma SIP, new sections that incorporate Federal and state rules, deletions of duplicative and outdated rules, and edits that simplify text and correct errors, we propose to find that the overall effect of the revisions would improve the Oklahoma SIP, and our approval would not interfere with any CAA requirement.

EPA's review of the proposed revisions and appendix, in accordance with section 110 of the CAA, forms the basis for demonstrating noninterference with applicable CAA requirements for attainment, including violation of any NAAQS or contribution to a PSD increment exceedance. The TSD contained in the docket for this action contains our review of the individual sections for each regulation associated with this proposed SIP revision rulemaking. Our review demonstrates that the changes made to the Oklahoma rules being acted upon in today's proposed rulemaking reflect either the same regulatory language or are consistent with the requirements found in the federal rules related to Minor NSR SIP programs. The TSD also contains references to supporting technical documentation in the docket regarding specific aspects of the proposed revisions, including Appendix H. De Minimis Facilities.

In its review of the proposed revisions and appendix identified above, the EPA also took into consideration the following factors. There is no currently designated nonattainment area for any air pollutant in the State of Oklahoma. The entire State is currently in attainment for all criteria pollutants, and has been since the original promulgation and subsequent revisions of the NAAQS and PSD increments. Also, air quality has generally remained at the same level or has steadily improved both statewide and in the largest metropolitan statistical areas of Oklahoma City and Tulsa, as shown in

[3] *Id.*

the EPA's ''Air Quality System'' repository, and the EPA's ''Air Quality Trends by City'' monitoring data averages from 1990 through 2015. Furthermore, since the list of exempted source categories (Appendix H) included in the proposed revisions have historically operated without coverage by an air permit and there are no anticipated increases in emissions or in the number of these types of sources resulting from the approval of the de minimis exemption list into the Oklahoma SIP, the EPA finds there is a low possibility of adverse impacts on ambient air quality from the emission sources and activities included in Appendix H. Our conclusion is supported by ambient air monitoring trends in Oklahoma, as more specifically discussed in the TSD associated with this proposed rulemaking. Our noninterference determination and proposed approval of OAC 252:100, Appendix H is consistent with our assessment of the environmental significance associated with emissions covered by this Appendix. The ODEQ has been implementing the Minor NSR air permitting program based on the codification of their permitting policy without any indication that the de minimis facilities listed in Appendix H have interfered with attainment or any other applicable requirement of the CAA. Therefore, the EPA proposes to approve Appendix H into the Oklahoma SIP since it meets CAA requirements for Minor NSR and the requirements of CAA section 110.

Based on historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l) and is consistent with the provisions of 40 CFR 51.160(e) which provide state agencies the latitude to define the types and sizes of facilities, buildings, structures, or installations subject to review. We believe the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Accordingly, the EPA is proposing approval of these revisions under section 110 of the Act. Further discussion of CAA section 110(l) is contained in the TSD for this proposed rule. The TSD is available in the docket and from the EPA Region 6 office.

IV. Proposed Action

We are proposing to approve severable portions of revisions relating to the Minor NSR program of the Oklahoma SIP, as submitted to the EPA on February 14, 2002. The revisions include portions of OAC 252:4, Rules of Practice and Procedure, and OAC 252:100, Air Pollution Control. These revisions replace the corresponding regulations in the Oklahoma SIP found in Regulation 1.4, Air Resources Management Permits Required, with the exception of the continued applicability of Regulation 1.4 to Minor NSR permitting under OAC 252:100–8. EPA has made its determination in accordance with the CAA and the EPA regulations at 40 CFR 51.160—51.164. Therefore, under section 110 of the Act, and for the reasons presented above and in our accompanying TSD, the EPA proposes approval of severable portions of revisions to the Oklahoma Minor NSR SIP identified in Table 1 below.

TABLE 1—REVISIONS TO THE OKLAHOMA SIP PROPOSED FOR APPROVAL

Section	Title	Effective date	Submittal date
Chapter 4 (OAC 252:4). Rules of Practice and Procedure			
Subchapter 1. General Provisions			
OAC 252:4–1–1	Purpose and Authority	June 11, 2001	February 14, 2002.
OAC 252:4–1–2	Definitions	June 11, 2001	February 14, 2002.
OAC 252:4–1–3	Organization	June 11, 2001	February 14, 2002.
OAC 252:4–1–4	Office hours and locations; communications	June 11, 2001	February 14, 2002.
OAC 252:4–1–5, except (a) 2nd sentence, which EPA will address in a separate action.	General Provisions, Availability of a record	June 11, 2001	February 14, 2002.
OAC 252:4–1–6	Administrative fees	June 11, 2001	February 14, 2002.
OAC 252:4–1–7	Fee credits for regulatory fees	June 11, 2001	February 14, 2002.
OAC 252:4–1–8	Board and Councils	June 11, 2001	February 14, 2002.
OAC 252:4–1–9	Severability	June 11, 2001	February 14, 2002.
Subchapter 7. Environmental Permit Process			
OAC 252:4–7–1	Authority	June 11, 2001	February 14, 2002.
OAC 252: 4–7–2, except 2nd sentence, which EPA will address in a separate action.	Preamble	June 11, 2001	February 14, 2002.
OAC 252: 4–7–3	Compliance	June 11, 2001	February 14, 2002.
OAC 252:4–7–4, except (a) 1st sentence, which EPA will address in a separate action..	Filing an application	June 11, 2001	February 14, 2002.
OAC 252:4–7–5	Fees	June 11, 2001	February 14, 2002.
OAC 252: 4–7–6	Receipt of Applications	June 11, 2001	February 14, 2002.
OAC 252:4–7–7	Administrative completeness review	June 11, 2001	February 14, 2002.
OAC 252:4–7–8	Technical review	June 11, 2001	February 14, 2002.
OAC 252:4–7–9	When review times stops	June 11, 2001	February 14, 2002.
OAC 252:4–7–10	Supplemental time	June 11, 2001	February 14, 2002.
OAC 252:4–7–11	Extensions	June 11, 2001	February 14, 2002.
OAC 252:4–7–12	Failure to meet deadline	June 11, 2001	February 14, 2002.
OAC 252:4–7–13, except (a), which EPA will address in a separate action.	Notices	June 11, 2001	February 14, 2002.
OAC 252:4–7–14	Withdrawing applications	June 11, 2001	February 14, 2002.
OAC 252:4–7–15	Permit issuance or denial	June 11, 2001	February 14, 2002.
OAC 252:4–7–17	Permit decision-making authority	June 11, 2001	February 14, 2002.
OAC 252:4–7–18	Pre-issuance permit review and correction	June 11, 2001	February 14, 2002

TABLE 1—REVISIONS TO THE OKLAHOMA SIP PROPOSED FOR APPROVAL—Continued

Section	Title	Effective date	Submittal date
OAC 252:4–7–19	Consolidation of permitting process	June 11, 2001	February 14, 2002.
Part 3. Air Quality Division Tiers and Timelines			
OAC 252:4–7–31	Air quality time lines	June 11, 2001	February 14, 2002.
OAC 252: 4–7–32, except (a) and (c)(1), which EPA will address in a separate action.	Air quality applications—Tier I	June 11, 2001	February 14, 2002.
Appendices for OAC 252: Chapter 4			
OAC 252: 4. Appendix C, except the Tier I column, which EPA will address in a separate action.	Permitting process summary	June 11, 2001	February 14, 2002.
Chapter 100 (OAC 252:100) Air Pollution Control			
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees			
OAC 252: 100–5–1	Purpose	June 12, 2000	February 14, 2002.
OAC 252: 100–5–1.1	Definitions	June 12, 2000	February 14, 2002.
OAC 252: 100–5–2	Registration of potential sources of air contaminants.	June 12, 2000	February 14, 2002.
OAC 252: 100–5–2.1	Emission inventory	June 12, 2000	February 14, 2002.
OAC 252: 100–5–2.2	Annual operating fees	June 12, 2000	February 14, 2002.
OAC 252: 100–5–3	Confidentiality of proprietary information	June 12, 2000	February 14, 2002.
Subchapter 7. Permits for Minor Facilities			
Part 1. General Provisions			
OAC 252: 100–7–1	Purpose	June 25, 1998	February 14, 2002.
OAC 252: 100–7–1.1	Definitions	June 11, 1999	February 14, 2002.
OAC 252: 100–7–2, except (a) 2nd sentence, which EPA will address in a separate action.	Requirement for permits for minor facilities	June 1, 2001	February 14, 2002.
Part 3. Construction Permits			
OAC 252: 100–7–15	Construction permit	June 11, 1999	February 14, 2002.
Part 4. Operating Permits			
OAC 252: 100–7–17	Relocation permits for portable sources	June 25, 1998	February 14, 2002.
OAC 252: 100–7–18	Operating permit	June 11, 1999	February 14, 2002.
Part 9. Permits by Rule			
OAC 252: 100–7–60	Permit by rule	June 11, 1999	February 14, 2002.
OAC 252: 100–7–60.1	Cotton gins	June 11, 1999	February 14, 2002.
OAC 252: 100–7–60.2	Grain elevators	June 11, 1999	February 14, 2002.
Subchapter 8. Permits for Part 70 Sources EPA will address applicability to Minor NSR permitting under OAC 252:100–8 in a separate action			
OAC 252: 100. Appendix H	DE MINIMIS FACILITIES	June 25, 1998	February 14, 2002.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: November 16, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–28673 Filed 11–28–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAR Case 2016–005; Docket No. 2016–0005, Sequence No.1]

RIN 9000–AN29

Federal Acquisition Regulation: Effective Communication between Government and Industry

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016. This rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before January 30, 2017 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR case 2016–005 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2016–005'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2016–005.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2016–005'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division, ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR Case 2016–005: Effective Communication between Government and Industry'' in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite ''FAR Case 2016–005.''

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA (the ''Councils'') are proposing to amend the FAR to implement section 887 of NDAA for FY 2016. The rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, in a manner that is consistent with existing law and regulation, and does not promote an unfair competitive advantage.

FAR 1.102 establishes the guiding principles within the FAR to—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

FAR 1.102–2 provides the requirements or ''performance standards'' for transforming these principles into positive, results-oriented acquisition strategies. A communication policy that takes into account a range of approaches for effectively describing the Government's requirements to private industry is an essential component of the Federal acquisition process. This concept is in keeping with the direction expressed by Congress in section 887 of the NDAA for FY 2016.

II. Discussion and Analysis

The proposed rule will amend FAR 1.102–2(a)(4) to specifically state that Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing laws and regulations, and promote a fair competitive environment. This revision,

coupled with the existing guidance in the FAR subpart 1.1 and the market research strategies set forth in FAR part 10, will better equip Federal acquisition officials with the information needed to issue high-quality solicitations.

III. Public Feedback

In the winter of 2011, the Office of Federal Procurement Policy (OFPP) launched a campaign to address misconceptions commonly held by industry and Government regarding the role of communication during the acquisition process in order to encourage early, frequent, and constructive engagement with industry to achieve better acquisition outcomes. The first of two ''myth-busting'' memoranda, issued in February 2011, focused on misconceptions on the part of Federal agencies and a second memorandum, issued in May 2012, addressed misconceptions that may be held by some in the vendor community. Both memoranda described best practices for effective communication that have been put into use by the acquisition community, with good results. Copies of these memoranda, ''Myth-Busting: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process'' and ''Myth-Busting 2: Addressing Misconceptions and Further Improving Communication During the Acquisition Process,'' are available at *https://www.whitehouse.gov/omb/procurement_index_memo.* The Councils seek to continue the conversation initiated by these memoranda and welcome any suggestions from the public to further enhance open communication between industry and the Federal acquisition community. The Councils specifically request information regarding the following:

- Which phase(s) of the Federal acquisition process—*i.e.,* acquisition planning/market research; solicitation/award; post award—would benefit from more exchanges with industry and what specific policies or procedures would enhance communication during these phases?
- Is there a current FAR policy that may inhibit communication? If so, what is the policy, and how could this policy be revised to remove barriers to effective communication?
- Might it be beneficial to encourage, or require, contracting officers to conduct discussions with offerors after establishing the competitive range for contracts of a high dollar threshold? If so, what would be the appropriate dollar threshold?

IV. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect the proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* because the proposed changes relate to internal Government business practices. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 887 of the National Defense Authorization Act (NDAA) for FY 2016, which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. Any effect to small businesses should be positive in that industry, including small business, will benefit from better communication with the Government. Based on data obtained from the Federal Procurement Data System—Next Generation (FPDS–NG) on June 21, 2016, approximately 112,150 businesses received Federal contracts during fiscal year 2015, and of these, approximately 75,000 or 67 percent were small businesses.

This rule does not impose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2016–005) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: November 21, 2016.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follows:

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

■ 2. Amend section 1.102–2 by—

■ a. Revising paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5) through (7) as paragraphs (a)(6) through (8), respectively; and

■ c. Adding a new paragraph (a)(5).

The revision and addition read as follows:

1.102–2 Performance standards.

(a) * * *

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry as part of market research (see 10.002), so long as those exchanges are consistent with existing laws, regulations, and promote a fair competitive environment.

(5) The Government will maximize its use of commercial products and services in meeting Government requirements.

* * * * *

[FR Doc. 2016–28450 Filed 11–28–16; 8:45 am]

BILLING CODE 6820–EP–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 752

RIN 0412–AA85

Government Property—USAID Reporting Requirements

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) seeks public comment on a proposed rule that would amend the USAID Acquisition Regulation (AIDAR) clarifying accountability for all mobile Information Technology equipment provided as government-furnished property by Government officials.

DATES: Comments must be received no later than January 30, 2017.

ADDRESSES: Address all comments concerning this proposed rule to Carol Ketrick, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867F, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. *By Email:* Submit electronic comments to *cketrick@usaid.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

3. *By Mail addressed to:* USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867–F, SA–44, Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Carol Ketrick, Telephone: 202–567–4676 or Email: *cketrick@usaid.gov*.

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid using special characters and any form of encryption. Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington.

Three days after receipt of a comment and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that explain why the rule would be inappropriate, ineffective, or unacceptable without a change. Comments that are insubstantial or outside the scope of the rule may not be considered.

B. Background

The Federal Government has been taking proactive steps to improve management and oversight of IT equipment especially in light of recent federal cybersecurity incidents. As part of a larger Agency effort to strengthen and clarify existing policy and procedures for accountability of all USAID Information Technology (IT) equipment and access to agency facilities and information systems, USAID is clarifying the requirements in the clause in the AIDAR at § 752.245–70, Government Property—USAID reporting requirements. While the clarifications are minor in nature, the entire clause at § 752.245–70 is being replaced at this time to correct formatting.

As stated in the clause at § 752.245–70, government-furnished property includes personal property furnished either prior to or during the performance of the contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. Instead of requiring designation of mobile IT as accountable on a case-by-case basis, the clause is being amended to clarify that all mobile Information Technology (IT) equipment is identified as accountable. This includes both mobile IT equipment that is USAID-owned and furnished to the contractor, as well as contractor acquired mobile IT equipment, title to which vests in the U.S. Government. Mobile IT equipment includes, but is not limited to, mobile phones (*e.g.* smartphones), laptops, tablets, and encrypted devices. The format of the required Annual Report of Government Property in Contractor's Custody is corrected to read that all accountable government-furnished property must be reported.

C. Regulatory Planning and Review

This rule has been determined to be ''nonsignificant'' under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, is not subject to review.

This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

E. The proposed rule clarifies but does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 752

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR Chapter 7 as set forth below:

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 2. Revise 752.245–70 to read as follows:

752.245–70 Government property—USAID reporting requirements.

USAID contracts, except those for commercial items, must contain the following preface and reporting requirement as additions to the appropriate Government Property clause prescribed by (48 CFR) FAR 45.107, per a GAO audit recommendation.

Preface: to be inserted preceding the text of the FAR clause.

Government Property—USAID Reporting Requirements (XXX 2016)

(a)(1) The term Government-furnished property, wherever it appears in the following clause, shall mean (1) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor, and (2)

personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. All mobile Information Technology (IT) equipment, including but not limited to, mobile phones (*e.g.* smartphones), laptops, tablets, and encrypted devices, either provided as government furnished property, or acquired by the contractor, title to which vests in the U.S. Government, are considered accountable.

(2) The term Government property, wherever it appears in the following clause, shall mean Government-furnished property and non-expendable personal property title to which vests in the U.S. Government under this contract, including ''Contractor-acquired Property'' title to which vests with the U.S. Government. Non-expendable personal property, for purposes of this contract, is defined as personal property that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and that has a unit cost of more than $500.

(b) Reporting Requirement: To be inserted following the text of the (48 CFR) FAR clause.

Reporting Requirements: The Contractor will submit an annual report on all Government property in a form and manner acceptable to USAID substantially as follows:

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[Name of contractor as of (end of contract year), 20XX]

	Motor vehicles	Furniture and furnishings—		Other government property
		Office	Living quarters	
A. Value of property as of last report				
B. Transactions during this reporting period				
1. Acquisitions (add):				
a. Contract acquired property [1]				
b. Transferred from USAID [2]				
c. Transferred from others, without reimbursement [3]				
2. Disposals (deduct):				
a. Returned to USAID				
b. Transferred to USAID—Contractor purchased				
c. Transferred to other Government agencies [3]				
d. Other disposals [3]				
C. Value of property as of reporting date				
D. Estimated average age of contractor held property	Years	Years	Years	Years

[1] Personal property that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and that has a unit cost of more than $500.
[2] Government-furnished property listed in this contract as nonexpendable or accountable.
[3] Explain if transactions were not processed through or otherwise authorized by USAID.

Property Inventory Verification

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained for Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature _____
Name _____
Title _____
Date _____

Dated: October 20, 2016.

Roy Plucknett,

Chief Acquisition Officer.

[FR Doc. 2016–28338 Filed 11–28–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. NHTSA–2016–0090], Notice 3

Federal Automated Vehicles Policy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: NHTSA is announcing a public meeting to seek input specifically on the Model State Policy and Modern Regulatory Tools sections of the recently released Federal Automated Vehicles Policy (the Policy). The Policy is guidance that seeks to speed the delivery of an initial regulatory framework for highly automated vehicles (HAVs) as well as encourage conformance with best practices to guide manufacturers and other entities in the safe design, development, testing, and deployment of HAVs.

The Model State Policy builds on collective knowledge gathered from safety stakeholders, and is intended to help avoid a patchwork of inconsistent laws and regulations. It outlines States' roles in regulating HAVs and lays out model procedures and requirements for use by States that wish to enact laws governing HAVs.

The Modern Regulatory Tools section includes potential new tools and authorities that could help NHTSA overcome the challenges and take advantage of the opportunities involved in the safe and expeditious development of HAVs.

Held in two distinct parts, the public meeting in the morning session will be an open listening session for the Model State Policy. In the afternoon session, there will be moderated panel discussions on the Modern Regulatory Tools. All comments during the public meeting will be oral.

DATES: NHTSA will hold the public meeting on December 12, 2016, in Arlington, VA. The meeting will start at 8:30 a.m. and continue until 5 p.m. local time. Check-in will begin at 8 a.m.

Attendees should arrive early enough to be seated by 8:30 a.m.

ADDRESSES: The meeting will be held at the United States Army Conference and Event Center (CEC), located at 2425 Wilson Boulevard, Arlington, VA 22201 (Courthouse Metro Station). This facility is accessible to individuals with disabilities. The meeting will also be webcast live, and a link to the webcast will be available through *http://www.nhtsa.gov/nhtsa/av/index.html.*

Docket: A docket (NHTSA–2016–0090) was created as an option for members of the public to submit written comments on the Policy. The formal docket comment period closed on November 22, 2016. Additional comments may still be submitted. Comments not received in time to be considered in the next iteration of the document will be considered in a future iteration of it. For access to the docket, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact Ms. Yvonne Clarke, Program Assistant, Office of Vehicle Safety Research at (202) 366–1845 or by email at *av_info_nhtsa@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2016, DOT released the Federal Automated Vehicles Policy (the Policy). The Policy is intended to ensure automated vehicle technologies are safely introduced and achieve their full safety potential by removing possible roadblocks to the integration of innovative automotive technology. The full Policy can be found at *www.nhtsa.gov/AV.*

Following publication of the Policy and during the open comment period of the Policy, NHTSA held the first in a series of public meetings on November 10, 2016. The morning session of the meeting focused on all four sections of the Policy: Section I: Vehicle Performance Guidance for Automated Vehicles, Section II: Model State Policy, Section III: NHTSA's Current Regulatory Tools, and Section IV: Modern Regulatory Tools. Comments were presented in an open listening session forum. The afternoon session focused specifically on the Safety Assessment, included under Section I: Vehicle Performance Guidance for Automated Vehicles. NHTSA extended invitations to specific organizations and individuals to ensure a broad perspective regarding submission of a Safety Assessment Letter. The session closed with opening the floor for further comments as desired.

Meeting

NHTSA is seeking input through this series of public meetings to further refine the Policy. The public meeting on December 12, 2016, the second in the series, is being held to provide individuals an opportunity to offer oral feedback regarding the following sections of the Policy: Section II: Model State Policy and Section IV: Modern Regulatory Tools.

During the morning session, the agency will seek input specifically on Section II: Model State Policy. This session will focus on gathering feedback regarding how the States, manufacturers, and other entities have understood and interpreted the Model State Policy. States have already begun passing laws and developing regulations surrounding HAVs. A national dialogue is necessary to gather additional information on any potential challenges foreseen, suggestions for clarification, and recommended improvements to assist in avoiding a patchwork of inconsistent laws and regulations. The session will be an open listening session in which individuals or organizations can register to speak or, if time permits, provide oral comments at the conclusion of the morning session.

During the afternoon session of the meeting, the Agency will seek specific input on Section IV: Modern Regulatory Tools. This section identifies potential new regulatory tools and statutory authorities that may aid the safe and efficient deployment of new lifesaving technologies. This session will focus on gathering feedback on the new tools and authorities discussed in this section, as well as other ideas and suggestions to assist in the safe development, testing, and deployment of HAVs. This session will consist of six moderated panels. Each panel will run approximately 35 minutes and be guided by questions appropriate for the topic at hand. Panels will focus on the following subject areas:

Panel I: Safety Assurance: Tools to demonstrate that entities design, manufacturing, and testing processes apply the NHTSA performance guidance, industry best practices, and other performance criteria and standards to assure the safe operation of motor vehicles, before those vehicles are deployed on public roads.

Panel II: Pre-Market Approval Authority: Pre-market approval is a substantially different regulatory approach than the current self-certification used by NHTSA. The discussion provided in the Policy is a preliminary exploration of issues and not intended as an endorsement.

Panel III: Imminent Hazard Authority: This authority would enable NHTSA to require manufacturers to take immediate action to mitigate safety risks deemed imminent hazards.

Panel IV: Expanded Exemption Authority for HAVs: Expanded exemption authority could change the volume and or time limit of the existing exemption authority to allow for greater flexibility and increase opportunities for data collection, analysis, and planning.

Panel V: Post-Sale Tools To Regulate Software Changes: Post-Sale updates in software could substantially change the functionality and operation that HAVs had when they were certified at the time of their manufacture. Additional tools may be useful in monitoring and regulating such updates.

Panel VI: Tools: The Policy highlights multiple tools that could potentially be used in safe deployment if given authority or clarification: Variable test procedures to ensure behavioral competence and avoid gaming of tests, functional and system safety, regular reviews for making agency testing protocols iterative and forward-looking, additional record keeping/reporting, and enhanced data collection tools.

Registration is necessary for all attendees. Attendees, including those who do not plan to make any oral remarks at the meeting, should register at: *https://docs.google.com/forms/d/152ETANkzDa62u2_b5AkuC1Qj00xDMKP292AYZk03R78/edit* by December 9, 2016. Please provide your name, email address, and affiliation, indicate if you wish to offer oral technical remarks, and please indicate whether you require accommodations such as a sign language interpreter. Space is limited, so advanced and early registration is highly encouraged.

Although attendees will be given the opportunity to offer technical remarks, there will not be time for attendees to

make audio-visual presentations during the meeting. Additionally, NHTSA may not be able to accommodate all attendees who wish to make oral remarks. NHTSA will conduct the public meeting informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the meeting. You may make arrangements for copies of the transcripts directly with the court reporter. The transcript will also be posted in the docket when it becomes available.

Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

Draft Meeting Agenda

8:00–8:30 a.m.—Arrival/Check-In
8:30–8:45 a.m.—Welcome/Important Notices/Format
8:45–9:00 a.m.—NHTSA Leadership Address
9:00–12:00 p.m.—Open Listening Session on Section II: Model State Policy
12:00–1:00 p.m.—Lunch (on your own)/ Arrival/Check-In
1:00–1:35 p.m.—Modern Regulatory Tools—Panel I: Safety Assurance
1:35–2:10 p.m.—Modern Regulatory Tools—Panel II: Pre-Market Approval
2:10–2:45 p.m.—Modern Regulatory Tools—Panel III: Imminent Hazard Authority
2:45–3:00 p.m.—Break
3:00–3:35 p.m.—Modern Regulatory Tools—Panel IV: Expanded Exemption Authority
3:35–4:10 p.m.—Modern Regulatory Tools—Panel V: Post Sale Tools to Regulate Software Changes
4:10–4:45 p.m.—Modern Regulatory Tools—Panel VI: Tools
4:45–5:00 p.m.—Closing Remarks/ Adjourn

Morning Session Meeting Topic

The morning session of the meeting will be an open listening session and an opportunity for individuals to offer oral remarks on Section II: Model State Policy of the Federal Automated Vehicles Policy (the Policy). This section describes the responsibilities of both the Federal and State governments in regards to the regulation of HAVs and recommends policy areas for States to consider for the validation, testing, and deployment of highly automated vehicles with the goal of generating a consistent national framework.

Specifically, commenters are asked to discuss the following topics at the meeting:

- *Content*

The agency seeks comment on the content included within the Model State Policy:

Are there any areas within the Model State Policy that need additional clarification?

Are there any gaps that you have identified in the Model State Policy?

What barriers or challenges do you foresee that might hinder the ability for implementation of the guidance?

- *The Federal and State Roles*

The agency seeks comment on the Federal and State Roles portion of the Model State Policy. Does the Policy clearly identify the appropriate roles and division of regulatory responsibilities for motor vehicle operations between Federal and State authorities?

- *Application for Manufacturers or Other Entities To Test HAVs on Public Roadways*

The agency seeks comment on the amount and type of information that a jurisdiction would deem appropriate to receive from NHTSA that would identify that each vehicle used for testing by manufacturers or other entities follows the Performance Guidance set forth by NHTSA and meets all applicable Federal Motor Vehicle Safety Standards?

- *Liability and Insurance*

States are responsible for determining liability rules for HAVs. For example, if a HAV is determined to be at fault in a crash then who should be held liable? For Insurance, States need to determine who (owner, operator, passenger, manufacturer, etc.) must carry motor vehicle insurance. What additional insurance and liability issues have States identified? Would it be desirable for NHTSA to create a commission to study such and make recommendations to the States?

Afternoon Session Meeting Topic

The afternoon session of the meeting provides an opportunity for invited individuals to comment on Section IV: Modern Regulatory Tools. This session will consist of six moderated panels. The panels will run approximately 35 minutes and be guided by questions appropriate for the topics at hand: Panel I: Safety Assurance, Panel II: Pre-Market Approval Authority, Panel III: Imminent Hazard Authority, Panel IV: Expanded Exemption Authority for HAVs, Panel V: Post-Sale Tools To Regulate Software Changes, and Panel VI: Tools. This section identifies potential new regulatory tools and statutory authorities that may aid the safe and efficient deployment of new lifesaving technologies.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–28628 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 81, No. 229
Tuesday, November 29, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 29, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: Rural Cooperative Development Grants—7 CFR 4284–F.

OMB Control Number: 0570–0006.

Summary of Collection: Section 310B of the Consolidated Farm and Rural Development Act (as amended) (Pub. L. 107–171) authorizes the Rural Cooperative Development Grants (RCDG) program. The program is administered through State Rural Development Offices on behalf of the Rural Business Cooperative Service (RBS). The primary objective of the program is to improve the economic condition of rural areas through cooperative development. Grant funds are awarded on a competitive basis using a scoring system that gives preference to applications that demonstrate a proven track record. The applicants, who are non-profit corporations or institutions of higher education, will provide information using various forms and supporting documentation.

Need and Use of the Information: Information is collected by RBS and Rural Development State and Area office staff, as delegated, from applicants and grantees. RBS will use the information collected to evaluate the applicant's ability to carry out the purposes of the program. Grantees are required to submit financial status and performance reports to confirm funds are being expended as approved and requests for advance or reimbursement to request payment. If this information were not collected, RBS would have no basis on which to evaluate the relative merit of each application.

Description of Respondents: Not for profit institutions.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 6,342.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–28677 Filed 11–28–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 29, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utility Service

Title: Rural Energy Savings Program.

OMB Control Number: 0572–0151.

Summary of Collection: Passage of section 6407 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171; 116 Stat. 424 as amended) created the Rural Energy Savings Program (RESP) and the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), provided authorization and funding to provide zero-percent loans to Rural Utilities Service borrowers or other eligible entities to relend to consumers for cost-effective energy efficiency measures. On June 21, 2016, the agency announced the RESP through a Notice of Funding Availability opening the program to applications so as to comply with the legislative mandate. The program is carried out through the Rural Utilities Service (RUS).

Need and Use of the Information: The application process consists of two steps. Step 1: An applicant seeking financing must submit a Letter of Intent to apply in an electronic Portable Document Format (pdf). The Letter of Intent contains the tax identification number, legal name and organization status; verification of rural status (counties to be served and populations); financial status; point of contact; description of program; implementation plan; and a list of eligible energy efficiency measures to be implemented. Step 2: RESP application—after review of the letter of intent, RUS notifies the eligible entity if it is invited to submit the loan application. Required application information is used to determine a borrower's ability to meet financial obligations, includes analyses and document review of the applicant's historical, current, and projected costs, revenues, cash flows, assets, and other factors that may be relevant on a case by case basis. The collection of information is essential to the mission of the agency and the RESP, and is necessary so that RUS can establish applicant and project eligibility.

Description of Respondents: Businesses or other for-profit; Not-for-profit institutions.

Number of Respondents: 33.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,422.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–28661 Filed 11–28–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 23, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by December 29, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Tart Cherries Grown in the states of MI, NY, PA. OR, UT, WA, and WI.

OMB Control Number: 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by an 18 member Board comprised of producers, handlers and one public member, plus alternates for each. The members will serve for a three-year term of office.

Need and Use of the Information: Various forms were developed by the Board for persons to file required information relating to tart cherry inventories, shipments, diversions and other needed information to effectively carry out the requirements of the Order. The information collected is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information. If information were not collected, it would eliminate needed data to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; Not-for-profit institutions.

Number of Respondents: 640.

Frequency of Responses: Reporting: Annually; Quarterly; On occasion.

Total Burden Hours: 741.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–28666 Filed 11–28–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0040]

Notice of Request To Renew an Approved Information Collection (Specified Risk Materials)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and

Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection regarding specified risk materials in cattle. The approval for this information collection will expire April 30, 2017.

DATES: Submit comments on or before January 30, 2017.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0028. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202)720–5627.

SUPPLEMENTARY INFORMATION:

Title: Specified Risk Materials.

OMB Number: 0583–0129.

Expiration Date of Approval: 4/30/2017.

Type of Request: Renewal of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). This statute provides that FSIS is to protect the public by verifying that meat products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS requires official establishments that slaughter cattle or process carcasses or parts of cattle to develop written procedures for the removal, segregation, and disposition of SRMs. The Agency requires that these establishments maintain daily records to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs and any corrective actions that they take to ensure that the procedures are effective (9 CFR 310.22).

FSIS also requires official slaughter establishments that transport carcasses or parts of cattle containing vertebral columns from cattle 30 months of age and older to another federally inspected establishment for further processing to maintain records verifying that the official establishment that received the carcasses or parts, removed and properly disposed of the portions of the vertebral column designated as SRMs (9 CFR 310.22(g)).

This monitoring and recordkeeping is necessary for establishments to further ensure—and for FSIS to verify—that meat and meat products distributed in commerce for use as human food do not contain SRMs.

The approval for this information collection will expire on April 30, 2017. There are no changes to the existing information collection. FSIS has made the following estimates for the renewal information collection:

Estimate of Burden: FSIS estimates that it will take respondents an average of approximately .12 hours per response.

Respondents: Official establishments that slaughter cattle or process parts of cattle.

Estimated No. of Respondents: 3,512.

Estimated No. of Annual Responses per Respondent: 303.

Estimated Total Annual Burden on Respondents: 123,916 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence SW., 6065, South Building, Washington, DC 20250; (202)720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United

States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email: Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on: November 22, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–28611 Filed 11–28–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino and Tonto National Forests; Arizona; Fossil Creek Wild and Scenic River Comprehensive River Management Plan and Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Coconino and Tonto national forests are preparing a Comprehensive River Management Plan (CRMP) for the Fossil Creek Wild and Scenic River, designated by Congress in 2009. Fossil Creek is located within the administrative boundaries of the Coconino and Tonto National Forests. Fossil Creek is the only intact perennial system with continuous flow without any water diversions in Arizona and is the only uninterrupted river system between the Verde River and the Mogollon Rim, spanning and connecting a number of biotic communities from upper Sonoran desert scrub through ponderosa pine forests. In response to the approximately 17-mile river Wild and Scenic River corridor designation, the Forest Service must establish a CRMP, in accordance with the Wild and Scenic Rivers Act (WSRA), to provide detailed direction, implementation actions, and monitoring to protect or enhance outstandingly remarkable values (ORVs) of the Wild and Scenic River. Since full flows returned to Fossil Creek with the decommissioning of a historic hydropower dam in 2005, public use has dramatically increased. Impacts from recreational use have threatened the river's water quality, free-flowing condition and its ORVs, potentially compromising their benefit and enjoyment by present and future generations. Planning for Fossil Creek has been ongoing for several years, and the environmental analysis for the Fossil Creek CRMP is being elevated from an environmental assessment (EA) to a more detailed environmental impact statement (EIS) in order to more fully analyze potential effects. The Forest Service has developed a proposed action and alternatives for future management of Fossil Creek through the CRMP.

DATES: Comments concerning the scope of the analysis must be received by January 13, 2017. The draft environmental impact statement is expected in summer 2017, and the final environmental impact statement is expected in spring 2018.

ADDRESSES: Send written comments via email to *comments-southwestern-coconino-redrock@fs.fed.us* (include ''Fossil Creek CRMP'' in the subject line); via mail to Coconino National Forest, Attention: Fossil Creek CRMP, P.O. Box 20429, Sedona, AZ 86341; via facsimile to (928) 203–7539; or in person at the Red Rock Ranger District Office, 8375 State Route 179, Sedona, AZ 86351.

FOR FURTHER INFORMATION CONTACT: Contact Marcos Roybal, Fossil Creek Project Coordinator, by email at *maroybal@fs.fed.us* or by phone at (928) 203–2915. For information about the project, including proposed alternatives and other project documents, visit *http://tinyurl.com/FossilCreekCRMP.* Hard copy documents may be requested from the phone number above.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the project is to prepare a CRMP for the Fossil Creek Wild and Scenic River to meet the requirements of Section 3(d)(1) of the WSRA. The CRMP is needed to provide for the protection or enhancement of Fossil Creek's water quality, free-flowing condition, and its ORVs, and to fulfill WSRA Section 3(b) requirements to establish river corridor boundaries and recreation and wild segment classifications.

Since the decommissioning of a historic hydropower dam in 2005, public use dramatically increased as visitors sought to explore the heavily publicized Arizona landscape. Recreational use during the high-use season (June-September), for example, increased from an estimated 20,000 visitors in 2006 to approximately 80,000 visitors by 2013, with thousands turned away daily at the entrance barricades due to overcrowding. River values that need protection from impacts of recreational use include water quality, recreation, geology, Western Apache traditional and contemporary cultural values, and biological values (especially the high diversity of fish and wildlife species). Impacts have resulted from uncontrolled dispersed camping, creation of unapproved camp sites, creation of unplanned trail systems, excessive littering, and human waste near the creek. Monitoring since 2011 indicates there are increasing impacts to upland vegetation that is habitat for wildlife species; damage to heritage sites; and unsafe conditions for visitors, Forest Service personnel and emergency responders. In April 2016, an interim management reservation system was successfully implemented to reduce the daily capacity of visitors during the high-use season; this interim management reservation system will remain in place until the CRMP's completion.

Proposed Action

The Coconino and Tonto National Forests propose to establish a CRMP to guide management of the designated 17-mile Fossil Creek Wild and Scenic River corridor and to protect or enhance the area's outstandingly remarkable values. Within a range of alternatives, the proposed action is designated to include the most flexibility to increase capacity and recreation infrastructure—maximizing recreation opportunities in the future—while providing protection for sensitive river and tribal values at the same time through both a management plan and site-specific actions. Project actions would address recreation capacity, corridor access, recreation facilities, services, and public health and safety.

During all or part of the year, a reservation system would manage visitor use by limiting the number of people at one time (PAOT) in the river

corridor. The initial PAOT in the river corridor would be set at the current 2016 reservation management level—approximately 154 vehicles and 780 PAOT, including administrative use. Over time, if appropriate, adaptive management would increase capacity to a permitted maximum of approximately 338 vehicles and 1,705 PAOT if infrastructure is built, management capacity allows, and visitor behavior promotes sustainable river value protection. The proposed action also includes the following potential elements:

- Existing recreation sites would be expanded, particularly at the Irving site.
- Additional trails would be developed to link recreation sites and provide a greater variety of opportunities for a different hiking levels.
- A portion of Forest Road 708 would become a motorized trail.
- A limited amount of camping would be allowed at designated sites.
- Opportunities for outfitters/guides and concessionaries would be provided.
- Limited or no waterplay would exist at some creek locations due to cultural or natural resource issues.
- Some system routes would be closed or decommissioned, and other restoration actions would occur.

The existing Coconino and Tonto Forest Plans would be programmatically amended under the 2012 Planning Rule to incorporate management direction for the Fossil Creek WSR corridor. The proposed amendments would add, replace, delete or revise (as needed) direction for the management of the Wild and Scenic River corridor.

Possible Alternatives

A range of alternatives to the proposed action, including a no action alternative and three additional action alternatives, are being considered. The no action alternative (Alternative A) represents no change (a CRMP would not be established) and serves as the baseline for comparison of the effects of the action alternatives. The four action alternatives, which are based on extensive public engagement that has occurred since 2010, include: Alternative B (Enhanced Protections), Alternative C (Non-motorized Experience), Alternative D (Motorized Use and Refugia), and Alternative E (Long-term Adaptive Management—Proposed Action). More detailed descriptions of the proposed action and alternatives can be found online at *http://tinyurl.com/FossilCreekCRMP* or be requested through the contact information provided above.

Lead and Cooperating Agencies

Arizona Game and Fish Department has cooperating agency status in order to assist the Coconino and the Tonto National Forests in the preparation of the Fossil Creek Wild and Scenic River CRMP and EIS.

Responsible Official

Laura Jo West, the Forest Supervisor on the Coconino National Forest, is the responsible official.

Nature of Decision To Be Made

Given the purpose and need of the project, the Coconino Forest Supervisor will review the proposed action, other alternatives, and the effects analysis in the EIS in order to determine: (1) Which alternative, or combination of alternatives, should be implemented; (2) what actions will be taken to protect and enhance the river's water quality, free-flowing condition and its ORVs, as required by WSRA; (3) the location and extent of infrastructure development, restoration activities, and changes in permitted visitor capacity; (4) the design features, mitigation measures and monitoring requirements; and, (5) consistency with the forest plans in place at the time of the decision and the need for amendments.

Preliminary Issues

Since 2010, public involvement regarding management of the Fossil Creek Wild and Scenic River has informed key issues and the alternatives that have been developed. Three key issues have arisen: (1) Recreation opportunities and recreational impacts on natural and cultural resources; (2) the level of recreation development; and (3) public health and safety. These issues form the basis for the alternatives presented in this Notice.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the environmental impact statement. Several scoping meetings will be held, and interested parties should check the Fossil Creek CRMP Web page at *http://tinyurl.com/FossilCreekCRMP* for dates and locations.

This project is subject to the objection process pursuant to 36 CFR 218 and is not being authorized under the Healthy Forest Restoration Act (HFRA). As such, those who provide specific written comments during designated comment periods in accordance with 36 CFR 218.5 will be eligible to participate in the objection process. Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless new information arises after designated opportunities (36 CFR 218.7). Several previous scoping periods have occurred since 2010, and provide standing to object under 36 CFR 218 to those who commented during designated comment periods.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, but will not be eligible for objection per 36 CFR 218.5.

Dated: November 22, 2016.

Laura Jo West,

Coconino National Forest Supervisor.

[FR Doc. 2016–28683 Filed 11–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Rural Energy for America Program for Federal Fiscal Year 2017; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Business-Cooperative Service (the Agency) published a notice in the **Federal Register** of October 18, 2016, announcing the acceptance of applications for funds available under the Rural Energy for America Program (REAP) for Fiscal Year (FY) 2017. The 2014 Farm Bill provides funding for the program for FY 2017. This notice provides corrections to: Section III. Eligibility Information, subsection D. Cost Sharing or Matching, paragraph (2) to indicate that applicants that have been previously been awarded energy audit or renewable energy development assistance grants and have not expended 50 percent of those funds are considered a ''risk'' pursuant to 2 CFR 200.205; Section V. Application Review Information, subsection (B) Review and Selection Process, paragraphs (1)(a) through (d), and paragraph (3)

application window closing dates of May 1, 2017 are being modified to March 31, 2017; Section V. Application Review Information, subsection C. State Director and Administrator Points, paragraph (1)(b)is replacing ''will'' with ''may'' to indicate that the awarding of State Director and Administrator points is at the discretion of the State Director or Administrator and to remove the last sentence of subparagraph (b) because the Agency will use information provided in the application verses a certification; and Section VIII. Other Information, subsection B. Nondiscrimination Statement is being updated.

FOR FURTHER INFORMATION CONTACT: For information about this Notice, please contact Maureen Hessel, Business Loan and Grant Analyst, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Stop 3225, Room 6870, Washington, DC 20250. Telephone: (202) 401–0142. Email: *maureen.hessel@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: This Notice makes certain corrections to the original Notice published on October 18, 2016 at 81 **Federal Register** 71689. Unfortunately, the October 18, 2016 Notice did not reflect all of the changes made in clearance. This Notice captures the omitted changes. In FR Doc. 2016–25163 of October 18, 2016 (81 FR 71689), make the following corrections:

Summary of Changes

1. In the first column on page 71691, Section III. Eligibility Information, Subsection D. Cost Sharing or Matching, paragraph (2), the last sentence which continues into the second column is replaced with the following text:

An applicant who has received one or more grants under this program must have a satisfactory history of performance which, as it relates to the expenditure of grant funds, the Agency interprets as the expenditure of 50 percent or more of the previously awarded grants by January 31, 2017. Those who cannot meet this requirement will be determined to be a ''risk'' pursuant to 2 CFR 200.205 and may be denied a subsequent grant or have special conditions imposed.

2. In the first column on page 71694, under Section V. Application Review Information, subsection B. Review and Selection Process, subparagraph (1)(a) is being revised to read as follows:

(a) Funds for renewable energy system and energy efficiency improvements grants of $20,000 or less will be allocated to the States. Eligible applications must be submitted by October 31, 2016, or March 31, 2017, in order to be considered for these set-aside funds. Approximately 50 percent of these funds will be made available for those complete applications the Agency receives by October 31, 2016, and approximately 50 percent of the funds for those complete applications the Agency receives by March 31, 2017. All unused State allocated funds for grants of $20,000 or less will be pooled to the National Office.

3. In the first column on page 71694, under Section V. Application Review Information, subsection B. Review and Selection Process, subparagraph (1)(b) the first sentence is being revised to read as follows:

Eligible applications received by March 31, 2017, for renewable energy system and energy efficiency improvements grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications of $20,000 or less from other States at a national competition.

4. In the first column on page 71694, under Section V. Application Review Information, subsection B. Review and Selection Process, subparagraph (1)(c) the first sentence is revised to read as follows:

Eligible applications for renewable energy system and energy efficiency improvements, regardless of the amount of the funding request, received by March 31, 2017, can compete for unrestricted grant funds.

5. In the first column on page 71694, under Section V. Application Review Information, subsection B. Review and Selection Process, subparagraph (1)(d) is being revised to read as follows:

(d) National unrestricted grant funds for all eligible renewable energy system and energy efficiency improvements grant applications received by March 31, 2017, which include grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications from other States at a final national competition.

6. In the second column on page 71694, under Section V. Application Review Information, subsection B. Review and Selection Process, paragraph (3), the last sentence is revised to read as follows:

All unfunded eligible applications for combined grant and guaranteed loan applications that are received by March 31, 2017, and that are not funded by State allocations can be submitted to the National Office to compete against other grant and combined grant and guaranteed loan applications from other States at a final national competition.

7. In the third column on page 71694, under Section V. Application Review Information, subsection C. State Director and Administrator Points, is revised to read as follows:

The State Director and the Administrator may take into consideration paragraphs V.C.(1) and (2) below in the awarding of points for eligible renewable energy systems and energy efficiency improvement grant applications submitted in Federal FY 2017:

8. In the third column on page 71694, under Section V. Application Review Information, subsection C. State Director and Administrator Points, subparagraph (1)(b) is revised to read as follows:

Owned by a member of a socially-disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

9. In the first column on page 71696, under Section VIII. Other Information, subsection B. Nondiscrimination Statement is revised to read as follows:

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office, or write a letter addressed to USDA providing all of the information requested in the form. To request a copy

of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: November 18, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2016–28737 Filed 11–28–16; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2016–0001]

RIN 3014–0012

Proposed Renewal of Information Collection; OMB Control Number 3014–0012, Online Architectural Barriers Act (ABA) Complaint Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: 30-Day Notice and request for comments.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (Access Board), plan to seek renewed approval from the Office of Management and Budget (OMB) for the information collection described below, namely our Online Architectural Barriers Act (ABA) Complaint Form (OMB Control Number 3014–0012), in accordance with the Paperwork Reduction Act of 1995. We have been using this complaint form since 2013 and propose to continue using it for an additional three years. By notice published on July 26, 2016, we solicited public comment on the proposed collection of information for a period of 60 days. *See* 81 FR 48739 (July 26, 2016). One comment was received, but it was not relevant to the information collection, and no revisions were made to the proposed Online ABA Complaint Form. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Submit comments by December 29, 2016.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, U.S. Access Board: ABA Complaint Form'' and directed to OMB, Office of Information and Regulatory Affairs, Attention: Joe Nye, U.S. Access Board Desk Officer, by email at *OIRA_SUBMISSION@OMB.EOP.GOV* or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503. Please also send a copy to Mario Damiani, Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111 or to *damiani@access-board.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposed information request, contact Mario Damiani, Office of the General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0050 (voice); 202–272–0064 (TTY). Email address: *damiani@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Online Architectural Barriers Act (ABA) Complaint Form.

OMB Control Number: 3014–0012.

Type of Request: Renewal of information collection.

Abstract

The Architectural and Transportation Barriers Compliance Board (Access Board) is seeking to renew its information collection for its Online Architectural Barriers Act (ABA) Complaint Form. The instrument allows complainants to submit a complaint online using a standardized Web-based complaint form posted on the agency's Web site, which prompts users to provide allegations and other pertinent data necessary for the Access Board to investigate their ABA complaint. The online form is user-friendly and accessible, and allows for greater efficiency, clarity, and timeliness in the complaint filing process. To view the Online ABA Complaint Form, please visit: *http://cts.access-board.gov/formsiq/form.do?formset_id=2&ds=fdd&reload=true#.*

Use of the Information

The Access Board enforces the ABA by investigating complaints submitted by members of the public concerning buildings or facilities designed, altered, or built by or on behalf of the federal government, leased by the federal government, or financed with federal funds. The Access Board uses the information provided by complainants concerning the building or facility and alleged accessibility barriers, along with any photographs or other supporting documentation which may be provided, to conduct its investigation. If complainants choose to provide personal contact information, which is optional, that information is not disclosed outside the agency without the written permission of the complainant.

Detailed Description of the Instrument

As noted above, the Online ABA Complaint Form is a standardized, web-based form available on the Access Board's Web site, and it can be filed 24 hours per day, seven days per week. Over 90 percent of complaints the Access Board receives each year are submitted using the Online ABA Complaint Form; the remainder are submitted in writing (without use of a form) by email, mail, or fax.

The Online ABA Complaint Form first prompts complainants to complete the form fields for the name and address of the building or facility. Second, complainants must select a barrier category from a drop-down menu (*e.g.,* doors, accessible routes, parking, etc.) for each barrier they allege to exist, then describe each barrier. Third, complainants are prompted to provide personal information, including their name, address, telephone number(s), and email address; again, this information is entirely optional, as complaints can be submitted anonymously. Complainants also have the option to attach electronic files containing pictures, drawings, or other relevant documents to the online complaint form when it is filed. Once any additional information is attached and the complaint is submitted, the system provides complainants confirmation that their complaint has been submitted successfully, together with an automatically generated complaint number for them to use when making inquiries about the status of their complaint.

We note that use of the Online ABA Complaint Form has greatly improved the completeness of the information included in complaints that are submitted for investigation, and that this in turn has expedited the processing of complaints.

Estimate of Burden

Public reporting burden for this collection of information is estimated to average less than 30 minutes to complete the Online ABA Complaint Form, depending on the number of alleged barriers the complainant identifies.

There is no financial burden on the complainant. Use of the online form relieves much of the burden that the prior practice of using a paper complaint form put on complainants by

making it clear which information is required and which is optional, and by essentially walking complainants through the process, step-by-step. As noted above, over 90 percent of all ABA complaints are submitted using the online form, though the Access Board continues to accept written complaints (without the use of any form) submitted by email, mail, or fax for complainants who prefer or need to use these filing methods.

Respondents: Individuals.

Estimated Number of Responses: 200 responses annually.

Frequency of Responses: Nearly all complainants only ever file one ABA complaint. Approximately 200 individuals file ABA complaints with the Access Board each year.

Estimated Total Annual Burden on Respondents: Each Online ABA Complaint Form takes approximately 30 minutes to complete, for a total of 100 hours annually (200 complaints × .5 hours). There is no financial burden on complainants.

Comments Requested

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information from respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

David M. Capozzi,

Executive Director.

[FR Doc. 2016–28743 Filed 11–28–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814 and A–570–898]

Chlorinated Isocyanurates From Spain and the People's Republic of China: Continuation of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty (AD) orders on chlorinated isocyanurates (chlorinated isos) from Spain and the People's Republic of China (PRC) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States. Therefore, the Department is publishing a notice of continuation for these AD orders.

DATES: Effective November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on chlorinated isos from Spain and the PRC on June 24, 2005.[1] On September 1, 2015, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department initiated sunset reviews of the antidumping duty orders on chlorinated isos from Spain and the PRC.[2] On September 11, 2015, the Department received a notice of intent to participate from Clearon Corporation (Clearon), Occidental Chemical Corporation (OxyChem), and Bio-Lab, Inc. (Bio-Lab), (collectively, the petitioners), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners are manufacturers of a domestic like product in the United States and, accordingly, are domestic interested parties pursuant to section 771(9)(C) of the Act.

On October 1, 2015, the Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive any responses from the respondent interested parties, *i.e.,* chlorinated isos producers and exporters from Spain or the PRC. On the basis of the notice of intent to participate and adequate substantive response filed by the petitioners and the inadequate response from any respondent interested party, the Department conducted expedited sunset reviews of these orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C).

As a result of its reviews, the Department determined that revocation of the AD orders from Spain and the PRC would likely lead to continuation or recurrence of the dumping. Therefore, the Department notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.[3]

On November 22, 2016, the ITC published its determination that revocation of the AD orders on chlorinated isos from Spain and the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[4]

Scope of the Orders

The products covered by the orders are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dehydrate) ($NaCl_2$ $(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($Nacl_2(NCO)_3$). The orders cover all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.021, 2933.69.6050, 3808.40.5000, 3808.50.4000 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium cichloroisocyanurates (anhydrous and dehydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 75l(d)(2) of the Act and 19 CFR 351.218(a), the

[1] *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order,* 70 FR 36562 (June 24, 2005). (''*Spain Order*''); *see also Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005) (''*PRC Order*'').

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 60253 (October 1, 2013).

[3] *See Chlorinated Isocyanurates From Spain and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 81 FR 461, (January 6, 2016).

[4] *See* Chlorinated Isocynurates from China and Spain; Determinations, 81 FR 83871 (November 22, 2016).

Department hereby orders the continuation of the AD orders on chlorinated isocyanurates from Spain and the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

These five-year sunset reviews and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

This five-year (sunset) review and notice are in accordance with section 751(c) and published pursuant to 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: November 23, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–28702 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of finished carbon steel flanges (steel flanges) from India. The period of investigation (POI) is April 1, 2015, through March 31, 2016. Interested parties are invited to comment on this preliminary determination.

DATES: Effective November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Maloof or Davina Friedmann, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5649 or (202) 482–0698, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2016, the Department published the notice of initiation of this investigation.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is steel flanges from India. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

We received no comments from interested parties regarding the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

The Department is conducting this countervailing duty (CVD investigation in accordance with section 701 of the Tariff Act of 1930 (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient) and that the subsidy is specific.[3] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a CVD rate for each individually-investigated producer/exporter of the subject merchandise. We preliminarily determine that countervailable subsidies are being provided with respect to the manufacture, production, or exportation of the subject merchandise. For a full description of the programs which have preliminarily determined to be countervailable, as well as those not used during the POI, *see* the Preliminary Decision Memorandum. In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually examined, we apply an ''all-others'' rate, which is normally calculated by weight-averaging the individual company subsidy rates of each of the companies investigated.

Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates or any rates based entirely on facts otherwise available pursuant to section 776 of the Act. Neither of the mandatory respondents' rates in this preliminary determination were zero or *de minimis* or based entirely on facts otherwise available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all-others'' rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Instead, we have calculated the all-others rate using a simple average of the final rates for the two mandatory company respondents.[4]

[1] *See* Finished Carbon Steel Flanges From India: Initiation of Countervailing Duty Investigation, 81 FR 49625 (July 28, 2016) (Initiation Notice).

[2] *See* Memorandum to Paul Piquado, ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India,'' dated November 21, 2016 (Preliminary Decision Memorandum).

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* Preliminary Decision Memorandum at ''CALCULATION OF THE ALL–OTHERS RATE'' (for further explanation of the business propretiary information concerns); *see also* Memorandum to the File, ''Countervailing Duty Investigation of Finished Carbon Steel Flanges: Preliminary Determination Margin Calculation for All-Others,'' dated concurrently with this memorandum.

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Norma (India) Limited, USK Exports Private Limited, UMA Shanker Khandelwal & Co., and Bansidhar Chiranjilal	2.76
R.N. Gupta & Company Limited	3.66
All-Others	3.21

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of steel flanges from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

U.S. International Trade Commission

In accordance with section 703(f) of the Act, we will notify the *U.S. International Trade Commission* (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

The Department intends to disclose calculations performed for this preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department, pursuant to 19 CFR 351.309(c)(2) and (d)(2). This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically-filed request must be received successfully, and in its entirety, by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time, and specific location to be determined. Parties will be notified of the date, time, and location of any hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 23, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or deburring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this investigation. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this investigation. While these finished carbon steel flanges are generally manufactured to specification ASME 816.5 or ASME 816.47 series A or series 8, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, etc.), type of face (*e.g.,* flat face, full face, raised face, etc.), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, etc.), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which: (a) Iron predominates, by weight, over each of the other contained elements: (b) The carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for

[5] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Subsidies Valuation
VIII. Loan Benchmark and Interest Rates
IX. Use of Facts Otherwise Available
X. Analysis of Programs
XI. Calculation of All-Others Rate
XII. International Trade Commission
XIII. Disclosure and Public Comment
XIV. Conclusion

[FR Doc. 2016–28704 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Certain Carbon and Alloy Steel Cut-To-Length Plate From the Federal Republic of Germany: Amended Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 14, 2016, the Department of Commerce (the Department) published in the **Federal Register** the *Preliminary Determination* of the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Federal Republic of Germany (Germany). The Department is amending the *Preliminary Determination* of the investigation to correct three ministerial errors.

DATES: Effective November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau or David J. Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4952 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2016, the Department published in the **Federal Register** the *Preliminary Determination* of CTL plate from Germany.[1] On November 14, 2016, Nucor Corporation (Nucor), a petitioner in this investigation, alleged that the Department made significant ministerial errors in the *Preliminary Determination*.[2]

Scope of the Investigation

The product covered by this investigation is CTL plate from Germany. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Significant Ministerial Error

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Further, 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[3]

Ministerial Error Allegations

Nucor alleges that the Department made three ministerial errors in its calculation of the preliminary determination margin for Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH (collectively, Salzgitter):

- In making the adjustment to U.S. price for reported freight revenue and capping that adjustment by the reported freight expense, the Department did not include freight revenue reported as a billing adjustment in the freight revenue cap.
- The Department recalculated U.S. credit expenses incorrectly by deducting freight revenue from the U.S. price used in the calculation. However, the reported U.S. price did not include freight revenue.
- The Department made an adjustment to U.S. price for inventory carrying expenses without converting the reported amount from euros to U.S. dollars.

We agree that the alleged errors were made. Moreover, pursuant to 19 CFR 351.224(g)(2), these ministerial errors are significant because the correction of these errors results in a change from a weighted-average dumping margin of zero or *de minimis* to a weighted-average dumping margin of greater than *de minimis.* Therefore, we are correcting the ministerial errors alleged by Nucor and we are amending our preliminary determination accordingly.[4]

Amended Preliminary Determination

We are amending the preliminary determination of sales at less-than-fair-value for CTL plate from Germany to reflect the correction of ministerial errors made in the margin calculation of that determination for Salzgitter. In addition, because we calculated a *de minimis* weighted-average dumping margin for Salzgitter in the *Preliminary Determination,* the preliminary ''All-Others'' Rate was based on the estimated weighted-average dumping margin calculated for Dillinger, the other mandatory respondent in this investigation. Thus, we are also amending the ''All-Others'' rate to account for the change in the Salzgitter margin. Accordingly, we are amending the calculation of the all-others rate to base it on the weighted-average of the margins calculated for Dillinger and Salzgitter using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.[5] As a result of the

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 79446 (November 14, 2016) (*Preliminary Determination*).

[2] *See* letter from Nucor entitled, ''Nucor's Ministerial Error Comments Regarding Salzgitter,'' dated November 14, 2016 (Nucor Letter).

[3] *See* 19 CFR 351.224(g)(1) and (2).

[4] *See* Memorandum to the File entitled ''Amended Preliminary Determination Margin Calculation for Salzgitter'' (Amended Preliminary Determination Memorandum) for further discussion of our calculations for this amended preliminary determination.

[5] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362, 61363 (October 13, 2015). For further discussion of the amended calculation of the all-others rate, *see* Amended Preliminary Determination Memorandum.

correction of the ministerial error, the revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average dumping margin (percent)
AG der Dillinger Hüttenwerke	6.56
Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH	5.00
All-Others	5.17

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates established in this amended preliminary determination, in accordance with section 733(d) and (f) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224. Because the rates are increasing from the *Preliminary Determination,* the amended cash deposit rates will be effective on the date of publication of this notice in the **Federal Register**.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we notified the International Trade Commission of our amended preliminary determination.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the amended preliminary determination, in accordance with 19 CFR 351.224.

This amended preliminary determination is issued and published in accordance with sections 733(f) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: November 21, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75 ksi min and UTS 95 ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145 ksi or more and UTS 160 ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–28703 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 160830797–6797–01]

National Cybersecurity Center of Excellence (NCCoE) Mobile Application Single Sign On (SSO) for the Public Safety & First Responder Sector

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for Mobile Application Single Sign On (SSO) for the Public Safety & First Responder sector. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Public Safety & First Responder sector program. Participation in the use case is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than December 29, 2016. When the use case has been completed, NIST will post a notice on the NCCoE Public Safety & First Responder sector program Web site at *https://nccoe.nist.gov/projects/building_blocks/mobile-sso* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *PSFR–NCCoE@nist.gov* or via hardcopy to National Institute of Standards and Technology, 100 Bureau Drive Mail Stop 2002, Gaithersburg, MD 20899. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A

CRADA template can be found at: *http://nccoe.nist.gov/node/138*.

FOR FURTHER INFORMATION CONTACT: Paul Grassi or William Fisher via email to *PSFR–NCCoE@nist.gov;* by telephone 301–975–0200; or by mail to National Institute of Standards and Technology, NCCoE; 100 Bureau Drive Mail Stop 2002, Gaithersburg, MD 20899. Additional details about the Public Safety & First Responder sector program are available at *https://nccoe.nist.gov/projects/building_blocks/mobile-sso*.

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder Sector. The full use case can be viewed at: *https://nccoe.nist.gov/projects/building_blocks/mobile-sso*.

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Use Case Objective

When responding to an emergency, public safety personnel require on-demand access to data. The ability to quickly and securely authenticate in order to access public safety data is critical to ensuring that first responders can deliver the proper care and support during an emergency. In order to adequately meet the need of diverse public safety personnel, missions, and operational environments, authentication mechanisms need to support deployments where devices may be shared amongst personnel and authentication factors have usability constraints.

The challenge that first responders face in authenticating quickly and securely to public safety systems is compounded when a first responder is forced to authenticate individually to multiple mobile applications. In addition, when authorizing application access to shared resources, first responders may be subjected to an additional authentication step at the resource provider. To address the challenge identified by the public safety community, the National Cybersecurity Center of Excellence (NCCoE) plans to develop a Mobile Application Single Sign On (SSO) reference design and implementation that meets these unique authentication requirements and allows first responders to take advantage of the latest mobile authentication technology and best practices.

A detailed description of the Mobile Application Single Sign On (SSO) is available at: *https://nccoe.nist.gov/projects/building_blocks/mobile-sso*.

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder use case (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

- Mobile devices
- Mobile platforms for biometric authentication
- Hardware based authenticators that interoperate with mobile platforms
- Software Development Kit (SDK) or platform that enables mobile single sign on capabilities

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 3 of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder use case (for reference, please see the link in the PROCESS section above):

1. A standards-based approach and a solution architecture that selects the most effective and secure approach to implement mobile SSO leveraging native capabilities of the mobile OS.

2. Support mobile SSO both for authentication and delegated authorization (as in OAuth Client Applications).

3. Ensure that mobile applications do not have access to user credentials.

4. Support multiple authenticators taking into account unique environmental constraints faced by first responders in emergency medical services, law enforcement, and the fire service such as:

a. Gloved, one-handed, or hands-free operation
b. Use of smoke hoods, fire hoods or gas masks that may prevent facial or iris recognition
c. Proximity based authenticators (new yubikeys)
d. Biometric based continuous authentication mechanisms that meet the requirements of draft NIST Special Publication 800–63B

5. Allow multi-user operation of shared mobile devices.

6. Support for multiple authentication protocols. If appropriate, public sector agencies must be able to leverage multifactor authentication. This may be accomplished by adopting Fast IDentity Online (FIDO 2.0) Universal Authentication Framework (UAF), Universal 2nd Factor (U2F), PKI, or some other means.

7. Support a spectrum of BYOD (Bring Your Own Device) and COPE (Corporate Owned, Personally Enabled) scenarios.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary

to make functional connections among security platform components

2. Support for development and demonstration of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder use case in NCCoE facilities which will be conducted in a manner consistent with Federal requirements (*e.g.,* FIPS 200, FIPS 201, SP 800–53, and SP 800–63)

Additional details about the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder sector use case are available at: *https://nccoe.nist.gov/projects/building_blocks/mobile-sso*.

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder sector capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the Public Safety & First Responder community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder sector use case. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Mobile Application Single Sign On (SSO) for the Public Safety & First Responder sector capability will be announced on the NCCoE Web site at least two weeks in advance at *http://nccoe.nist.gov/*. The expected outcome of the demonstration is to improve mobile application single sign-on across an entire Public Safety & First Responder sector enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE Web site *http://nccoe.nist.gov/*.

Kent Rochford,

Associate Director for Laboratory Programs.

[FR Doc. 2016–28627 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board (OEAB)

AGENCY: Office of Oceanic and Atmospheric Research (OER) National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Notice of Membership Solicitation for the OEAB.

SUMMARY: OAR publishes this notice to solicit applications to fill a single membership vacancy on the Ocean Exploration Advisory Board (OEAB) with an individual demonstrating expertise in data science and management and one other area of expertise relevant to ocean exploration, such as seafloor mapping. The new OEAB member will serve an initial three-year term, renewable once.

The purpose of the OEAB is to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters pertaining to ocean exploration including: The identification of priority areas that warrant exploration; the development and enhancement of technologies for exploring the oceans; managing the data and information; and disseminating the results. The OEAB also provides advice on the relevance of the program with regard to the NOAA Strategic Plan, the National Ocean Policy Implementation Plan, and other appropriate guidance documents.

APPLICATIONS: An application is required to be considered for OEAB membership. To apply, please submit (1) full name, title, institutional affiliation, and contact information (mailing address, email, telephones, fax); (2) a short description of his/her qualifications relative to data science and management, and at least one other area of expertise related to ocean exploration; (3) a resume or curriculum vitae (maximum length 4 pages); and (4) A cover letter stating their interest in serving on the OEAB and highlighting specific areas of expertise relevant to the purpose of the OEAB.

DATES: Application materials should be sent to the mailing or email address specified below and must be received no later than 15 days after publication of this **Federal Register** Notice.

ADDRESSES: Submit resume and application materials to Yvette Jefferson via mail or email. Mail: NOAA, 1315 East West Highway, SSMC3 Rm 10315, Silver Spring, MD 20910; Email: *Yvette.Jefferson@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: David McKinnie, OEAB Designated Federal Officer, NOAA/OER, 7600 Sand Point Way NE., Seattle, WA 98115; 206–526–6950; *david.mckinnie@noaa.gov*.

SUPPLEMENTARY INFORMATION: The OEAB functions as an advisory body in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., with the exception of section 14. It reports to the Under Secretary, as directed by 33 U.S.C. 3405.

The OEAB consists of approximately ten members including a Chair and Co-chair(s), designated by the Under Secretary in accordance with FACA requirements and the terms of the approved OEAB Charter.

The OEAB:

a. advises the Under Secretary on all aspects of ocean exploration including areas, features, and phenomena that warrant exploration; and other areas of program operation, including development and enhancement of technologies for exploring the ocean, managing ocean exploration data and information, and disseminating the results to the public, scientists, and educators;

b. assists the program in the development of a 5-year strategic plan for the fields of ocean, marine, and Great Lakes science, exploration, and discovery, as well as makes recommendations to NOAA on the evolution of the plan based on results and achievements;

c. annually reviews the quality and effectiveness of the proposal review process established under [correct]; and

d. provides other assistance and advice as requested by the Under Secretary.

OEAB members are appointed as special government employees (SGEs)

and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable expenses incurred in performing such duties but will not be reimbursed for their time. All OEAB members serve at the discretion of the Under Secretary.

The OEAB meets three to four times each year, exclusive of subcommittee, task force, and working group meetings.

As a Federal Advisory Committee, the OEAB's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as including the interests of geographic regions of the country and the diverse sectors of our society.

For more information about the OEAB, please visit *oeab.noaa.gov.*

OER BACKGROUND: NOAA's Office of Ocean Exploration and Research is part of the NOAA Office of Ocean Exploration and Research. OER's mission is to explore the ocean for national benefit.

OER:

e. Explores the ocean to make discoveries of scientific, economic, and cultural value, with priority given to the U.S. Exclusive Economic Zone and Extended Continental Shelf;

f. Promotes technological innovation to advance ocean exploration;

g. Provides public access to data and information;

h. Encourages the next generation of ocean explorers, scientists, and engineers; and,

i. Expands the national ocean exploration program through partnerships.

For more information about the Office of Ocean Exploration and Research please visit *oceanexplorer.noaa.gov*.

Dated: November 21, 2016.

Jason Donaldson,

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–28594 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF052

Western Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a change to a public meeting notice.

SUMMARY: The Western Pacific Fishery Management Council (Council) announces a change in location for its Hilo, HI public meetings and scoping sessions to discuss fishery management regulations for the Monument Expanded Area in the Northwestern Hawaiian Islands.

DATES: The Council will hold meetings in Hilo, HI on Tuesday, December 6, 2016, between 6 p.m. and 9 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Hilo meeting will be held at the University of Hawaii at Hilo, Edith Kanakaole Hall Room 126, 200 W Kawili St, Hilo, HI 96720.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on November 21, 2016 (81 FR 83204). The location of the meeting was changed from the previous notice. The agenda has not changed and public scoping and comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for All Meetings

1. Visit Informational Booths
2. Informational Briefing on Presidential Proclamation, Council Role in Rule-making Process, Data Discovery
3. Public Comment/Scoping Session
4. Adjourn

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: November 22, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–28614 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF029

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding annual renewals for Ecuador, El Salvador, Guatemala, Mexico, and Spain.

SUMMARY: The NMFS Assistant Administrator (Assistant Administrator) has issued affirmative finding annual renewals for the Governments of Ecuador, El Salvador, Guatemala, Mexico, and Spain (Hereafter known as ''The Nations'') under the Marine Mammal Protection Act (MMPA). These affirmative finding annual renewals will allow yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the Agreement on the International Dolphin Conservation Program (AIDCP) by The Nations' flagged purse seine vessels or purse seine vessels operating under The Nations' jurisdiction to be imported into the United States. The affirmative finding annual renewals were based on reviews of documentary evidence submitted by the Governments of The Nations and by information obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: These affirmative finding annual renewals are effective for the one-year period of April 1, 2016, through March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Justin Greenman, West Coast Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802. Phone: 562–980–3264. Email: *justin.greenman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows for importation into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is

meeting its obligations under the AIDCP and obligations of membership in the IATTC. Every five years, the government of the harvesting nation must request a new affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS reviews the affirmative finding and determines whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with AIDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the AIDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f)(8), the Assistant Administrator considered documentary evidence submitted by the governments of The Nations and obtained from the IATTC, and has determined that The Nations have met the MMPA's requirements to receive affirmative finding annual renewals.

After consultation with the Department of State, the Assistant Administrator issued affirmative finding annual renewals to The Nations, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by The Nations' flagged purse seine vessels or purse seine vessels operating under The Nations' jurisdiction for the one-year period of April 1, 2016, through March 31, 2017.

El Salvador's five-year affirmative finding will remain valid through March 31, 2018 and Ecuador, Guatemala, Mexico, and Spain's five-year affirmative findings will remain valid through March 31, 2020, subject to subsequent annual reviews by NMFS.

Dated: November 23, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–28731 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF025

Notice of Availability of a Draft Environmental Assessment for the Bluefield Holdings, Inc. Site 2 Shoreline Restoration Project Credit Purchase

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

ACTION: Notice of availability of a Draft Environmental Assessment; request for comments.

SUMMARY: Notice is hereby given that a document entitled, ''Draft Environmental Assessment for the Bluefield Holdings, Inc. Site 2 Shoreline Restoration Project Credits Purchase'' (Draft EA) is available for public review and comment. This document has been prepared by the state, tribal, and Federal natural resource trustee agencies (the ''Trustees'')—NOAA, United States Fish & Wildlife Service (USFWS) acting on behalf of the U.S. Department of the Interior (DOI), Washington Department of Ecology (as lead State trustee), Washington Department of Fish and Wildlife, Muckleshoot Indian Tribe, and the Suquamish Tribe—to evaluate potential impacts to the environment from purchasing 30 credits in the Bluefield Holdings, Inc. Site 2 Shoreline Restoration Project (Site 2). The proposed credits purchase in the Site 2 project is a component of the overall effort to restore natural resources and resource services that have been injured and lost resulting from releases of hazardous substances into the Lower Duwamish River (LDR). This draft EA is tiered from the June 2013 Final LDR NRDA Restoration Plan and Programmatic Environmental Impact Statement (RP/EIS). The EA describes the Trustees' proposed plan to purchase 30 credits in the Site 2 project. The purchase would utilize a portion of the funds provided to the Trustees from the Pacific Sound Resources settlement (*United States et al.* v. *Pacific Sound Resources et al.,* Civ. No. C94–687 (W.D. Wash. Aug. 29, 1994)). The Trustees may only use these funds for restoration purposes. The Trustees will consider comments received during the public comment period before finalizing this EA.

DATES: Comments on the Draft EA must be submitted in writing on or before December 27, 2016.

ADDRESSES: Requests for copies of the Draft EA should be sent to Rebecca Hoff of NOAA at 7600 Sand Point Way NE., DARC Building 1, Seattle, WA 98115 or by email: *Rebecca.Hoff@noaa.gov*. The Draft EA is also available for downloading at *http://bit.ly/2fJlE8G*. Comments on this plan are to be sent in writing to Rebecca Hoff of NOAA. These written comments may be submitted either by mail at the address provided above; by fax to 206–526–6665, or by email to *Rebecca.Hoff@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca Hoff, at 206–526–6276, or email: *Rebecca.Hoff@noaa.gov*.

SUPPLEMENTARY INFORMATION: The LDR is the estuarine portion of the Duwamish River, and starts from the mouth at the East and West Waterways on both sides of Harbor Island at Seattle's Elliott Bay and ends at the natural rock formation commonly known as North Winds Weir (approximately 7 miles), in central Puget Sound. Historic operations of various entities resulted in releases of hazardous substances, such as polynuclear aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), heavy metals, and other hazardous compounds, into the LDR.

The RP/PEIS describes the type of restoration that the Trustees believe would be most effective in addressing the injuries in the LDR resulting from releases of hazardous substances—Integrated Habitat Restoration. The Site 2 project will create the full suite of habitats identified in the Integrated Habitat Restoration approach, and is consistent with the description of projects and project impacts discussed in the RP/PEIS. The Draft EA released today identifies the Trustees' proposed use of some of the settlement funds to purchase restoration credits sufficient to allow Bluefield Holdings to begin implementing the Site 2 project. The Site 2 project will create and/or rehabilitate shallow subtidal habitat, intertidal mudflat habitat, marsh habitat, and riparian habitat.

In undertaking this NRDA restoration effort and in releasing this Draft EA, the Trustees are acting in accordance with their designation and authorities under section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(f) of the Federal Water Pollution and Control Act (FWPCA), 33 U.S.C. 1321, Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.600 through 300.615, and regulations at 43 CFR part 11, which are applicable to natural resource

damage assessments under CERCLA. The Trustees act on behalf of the public under these authorities to protect and restore natural resources injured or lost resulting from discharges or releases of hazardous substances.

Dated: November 22, 2016.

Patricia A. Montanio,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2016–28617 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Digital Economy Board of Advisors Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Digital Economy Board of Advisors. The Board advises and provides recommendations to the Secretary of Commerce, through the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA), on a broad range of issues concerning the digital economy and Internet policy.

DATES: The meeting will be held on December 15, 2016, from 8:30 a.m. to 12:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Public comments may be mailed to: Digital Economy Board of Advisors, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; or emailed to: *DEBA@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Evelyn Remaley, Designated Federal Officer (DFO), at (202) 482–3821 or *DEBA@ntia.doc.gov;* and/or visit NTIA's Web site at *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

SUPPLEMENTARY INFORMATION:

Background: Economic prosperity is increasingly tied to the digital economy, which is a key driver of competitiveness, business expansion, and innovation. Indeed, virtually every modern company relies on the Internet to grow and thrive. As a result, the Department of Commerce (Department) has made technology and Internet policy a top priority, investing resources to address challenges and opportunities businesses face in a global economy.

Last year, the Secretary of Commerce unveiled the Department's Digital Economy Agenda, which will help businesses and consumers realize the potential of the digital economy to advance growth and opportunity. The Agenda focuses on four key objectives: Promoting a free and open Internet worldwide; promoting trust online; ensuring access for workers, families, and companies; and promoting innovation. To support the Agenda, the Secretary directed NTIA to create the Digital Economy Board of Advisors as a mechanism for receiving regular advice from leaders in industry, academia, and civil society. See Committee Charter at *https://www.ntia.doc.gov/files/ntia/publications/deba_charter_12222015.pdf.*

The Digital Economy Board of Advisors convened its first meeting on May 16, 2016, to determine preliminary priorities and work streams. The Board convened its second meeting on September 30, 2016, and reviewed progress made on each of the work streams identified during the first open meeting.

This Board is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Board functions solely as an advisory body in compliance with the FACA. For more information about the Board, visit *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

Matters to be Considered: The Board provides independent advice and recommendations to the Secretary, through the Assistant Secretary, on a broad range of policy issues impacting the digital economy. The Board's mission is to provide advice to the Department on increasing domestic prosperity, improving education, and facilitating participation in political and cultural life through the application and expansion of digital technologies. The Board's advice focuses on ensuring the Internet continues to thrive as an engine of growth, innovation, and free expression. The Department will use the advice provided by the Board to inform its decision-making processes and to advance Administration goals.

NTIA will post a detailed agenda on its Web site, *https://www.ntia.doc.gov/category/digital-economy-board-advisors,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Board regarding the agenda items during the meeting.

Time and Date: The meeting will be held on December 15, 2016, from 8:30 a.m. to 12:00 p.m., Eastern Standard Time (EST). The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/category/digital-economy-board-advisors,* for the most up-to-date meeting agenda and access information for the meeting.

Place: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Public comments may be mailed to: Digital Economy Board of Advisors, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Ms. Remaley at (202) 482–3821 or *DEBA@ntia.doc.gov* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Board at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Board in advance of the meeting must send them to NTIA at the above-listed address. Comments must be received five (5) business days before the scheduled meeting date to provide sufficient time for review. Comments received after this date will be distributed to the Board, but may not be reviewed prior to the meeting. We also request that comments be submitted electronically to *DEBA@ntia.doc.gov* with the subject: ''DEBA Third Meeting Comment.'' Comments provided via email also may be submitted in writing.

Records: NTIA maintains records of all Board proceedings. Board records are available for public inspection at NTIA's Washington, DC office at the address above. Documents, including the Board's charter, member list, agendas, minutes, and any reports are available on NTIA's Web site at *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

Dated: November 23, 2016.

Milton Brown,

Deputy Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–28708 Filed 11–28–16; 8:45 am]

BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2016–0049]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing a new information collection titled, ''Consumer Response Customer Response Survey.''

DATES: Written comments are encouraged and must be received on or before December 29, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov*. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Customer Response Survey.

OMB Control Number: 3170–XXXX.

Type of Review: New collection (Request for a new OMB control number).

Affected Public: Individuals or Households.

Estimated Number of Respondents: 93,700.

Estimated Total Annual Burden Hours: 4,685.

Abstract: The purpose of this information collection is to incorporate a short survey into the complaint closing process. Consumers will have the option to provide feedback on the company's response to and handling of their complaint via all channels including online, phone, fax, and mail. The results of this feedback will be shared with the company that responded to the complaint to inform its complaint handling. The feedback will also be used to inform the Bureau's work to supervise companies, enforce federal consumer financial laws, write better rules and regulations, and monitor the market for consumer financial products and services. Consistent with the Bureau's policy statement on Disclosure of Consumer Complaint Data, the Bureau will evaluate the data collected from consumer feedback before publication on the Consumer Complaint Database. The Bureau anticipates publication of consumer feedback to highlight positive company behavior, provide the public with timely and understandable information about consumer financial products and services, and improve the functioning, transparency, and efficiency of markets for such products and services. Only those feedback narratives for which opt-in consumer consent is obtained, and to which robust personal information scrubbing standard and methodology is applied, will be eligible for publication.

This information collection reflects comments received in response to the March 24, 2015 (80 FR 15583) Notice and Request for Information (RFI), seeking input from the public on the potential collection and sharing of information about consumers' positive interactions with financial service providers including providing more information about a company's complaint handling such as highlighting the quality of responses to consumers by replacing the consumer ''dispute'' function with a two-part consumer feedback process as well as comments received during the 60-day comment period and user testing conducting concurrent with the 60-day comment period. The consumer will have the ability to answer three questions about the company's response to and handling of his or her complaint, to rate the company's overall response using one-to-five stars and provide a narrative description in support of the rating. Positive feedback about the company's handling of the consumer's complaint would be reflected by both high satisfaction scores and by the narrative in support of the score. Negative feedback about the company's handling of the consumer's complaint would be better supported and more useful to companies than the current ''dispute'' function. The Consumer Complaint Company Response Survey will replace the ''dispute'' option and allow consumers to offer both positive and negative feedback on their complaint experience.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on August 1, 2016, 81 FR 50484, Docket Number: CFPB–2016–0041. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 22, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–28651 Filed 11–28–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0179]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 30, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Defense Human Resource Activity), ATTN: Robert Eves, 4800 Mark Center Drive, Alexandria, VA 22350–4000, or submit an email to *dhracacpolicy@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Identification Card/DEERS Enrollment; DD Form 1172–2; OMB Control Number 0704–0415.

Needs and Uses: This information collected is used to determine an individual's eligibility for benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Affected Public: Individuals or Households.

Annual Burden Hours: 135,000.

Number of Respondents: 2,700,000.

Responses per Respondent: 1.

Annual Responses: 2,700,000.

Average Burden per Response: 3 minutes.

Frequency: On Occasion.

Dated: November 23, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–28688 Filed 11–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2016–OS–0113]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Notice of proposed amendments to the Manual for Courts-Martial, United States (2012 ed.) and notice of public meeting.

SUMMARY: The Department of Defense requests comments on proposed changes to the Manual for Courts-Martial, United States (2012 ed.) (MCM). The proposed changes concern the rules of procedure and evidence applicable in trials by courts-martial. The approval authority for these changes is the President. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.01, ''Preparing, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

The proposed changes also concern supplementary materials that accompany the rules of procedure and evidence and punitive articles. The Department of Defense, in conjunction with the Department of Homeland Security, publishes these supplementary materials to accompany the Manual for Courts-Martial. Supplementary materials consist of Discussions (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), Analyses, and various appendices. The approval authority for changes to the supplementary materials is the General Counsel, Department of Defense; changes to these items do not require Presidential approval.

DATES: Comments on the proposed changes must be received no later than January 30, 2017. A public meeting for comments will be held on December 15, 2016, at 10 a.m. in the United States Court of Appeals for the Armed Forces building, 450 E Street NW., Washington, DC 20442–0001.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Major Harlye S.M. Carlton, USMC, Executive Secretary, JSC, (703) 693–9299, har*lye.carlton@usmc.mil.* The JSC website is located at *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003.

The JSC invites members of the public to comment on the proposed changes; such comments should address specific recommended changes and provide supporting rationale.

This notice also sets forth the date, time, and location for a public meeting of the JSC to discuss the proposed changes.

This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

The proposed amendments to the MCM are as follows:

Section 1. **Part II of the Manual for Courts-Martial, United States, is amended as follows:**

(a) R.C.M. 104(b)(1)(B) is amended to read as follows:

''(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, ''special victims' counsel'' are judge advocates, and civilian counsel, who, in accordance with 10 U.S.C. 1044e, are designated as Special Victims' Counsel.''

(b) R.C.M. 601(d)(2)(B) is amended to read as follows:

''The convening authority has received the advice of the staff judge advocate required under Article 34.''

(c) R.C.M. 701(g)(2) is amended to read as follows:

''(2) *Protective and modifying orders.* Upon a sufficient showing the military judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. If any rule requires, or upon motion by a party, the military judge may review any materials *in camera,* and permit the party to make such showing, in whole or in part, in writing to be inspected only by the military judge *in camera.* If the military judge reviews any materials *in camera,* the entirety of any materials not ordered disclosed by the military judge shall be sealed and attached to the record of trial as an appellate exhibit. Such material may only be examined by reviewing or appellate authorities in accordance with R.C.M. 1103A.''

(d) R.C.M. 704(c) is amended to read as follows:

''(c) *Authority to grant immunity.* A general court-martial convening authority, or designee, may grant immunity, and may do so only in accordance with this rule.''

(e) R.C.M. 704(c)(1) is amended to read as follows:

''(1) *Persons subject to the code.* A general court-martial convening authority, or designee, may grant immunity to a person subject to the code. However, a general court-martial convening authority, or designee, may grant immunity to a person subject to the code extending to a prosecution in a United States District Court only when specifically authorized to do so by the Attorney General of the United States or other authority designated under chapter 601 of title 18 of the U.S. Code.''

(f) R.C.M. 704(c)(2) is amended to read as follows:

''(2) Persons not subject to the code. A general court-martial convening authority, or designee, may grant immunity to persons not subject to the code only when specifically authorized to do so by the Attorney General of the United States or other authority designated under chapter 601 of title 18 of the U.S. Code.''

(g) R.C.M. 704(c)(3) is amended to read as follows:

''(3) *Other limitations.* Subject to Service regulations, the authority to grant immunity under this rule may be delegated in writing at the discretion of the general court-martial convening authority to a subordinate special court-martial convening authority. Further delegation is not permitted. The authority to grant or delegate immunity may be limited by superior authority.''

(h) The first sentence of R.C.M. 704(e) is amended to read as follows:

''(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the general court-martial convening authority, or designee.''

(i) The header for R.C.M. 1103(b) is amended to read as follows:

''(b) *General and special courts-martial.*''

(j) R.C.M. 1103(b)(2)(A) is amended to read as follows:

''(A) *In general.* The record of trial in each general and special court-martial shall be separate, complete, and independent of any other document.''

(k) R.C.M. 1103(b)(3)(G) is amended to read as follows:

''(G) Any post-trial recommendation of the staff judge advocate or legal officer and proof of service on defense counsel in accordance with R.C.M. 1106(f)(1);''

(l) R.C.M. 1103(b)(3)(H) is amended to read as follows:

''(H) Any response by defense counsel to any post-trial review;''

(m) R.C.M. 1103(b)(3)(J) is amended to read as follows:

''(J) Any statement as to why it is impracticable for the convening authority to act;''

(n) R.C.M. 1103(c) is amended to read as follows:

''(c) [DELETED]''

(o) R.C.M. 1103A is amended to read as follows:

''(a) *In general.* If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other materials ordered sealed by the preliminary hearing officer or military judge, counsel for the government or trial counsel shall cause such materials to be sealed so as to prevent unauthorized examination or disclosure. Counsel for the government or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the preliminary hearing officer or military judge, and inserted at the appropriate place in the original record of trial. Copies of the report of preliminary hearing or record of trial shall contain appropriate annotations that materials were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or original record of trial. This Rule shall be implemented in a manner consistent with Executive Order 13526, concerning classified national security information.

(b) *Examination and disclosure of sealed materials.* Except as provided in the following subsections to this rule, sealed materials may not be examined or disclosed.

(1) *Prior to referral.* Prior to referral of charges, the following individuals may examine and disclose sealed materials only if necessary for proper fulfillment of their responsibilities under the Code, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility: The

judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; and the general court-martial convening authority.

(2) *Referral through authentication.* Prior to authentication of the record by the military judge, sealed materials may not be examined or disclosed in the absence of an order from the military judge based upon good cause.

(3) *Authentication through action.* After authentication and prior to disposition of the record of trial pursuant to R.C.M. 1111, sealed materials may not be examined or disclosed in the absence of an order from the military judge upon a showing of good cause at a post-trial Article 39(a) session directed by the convening authority.

(4) *After action.*

(A) *Examination by reviewing and appellate authorities.* Reviewing and appellate authorities may examine sealed materials when those authorities determine that examination is reasonably necessary to a proper fulfillment of their responsibilities under the Code, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility.

(B) *Examination by appellate counsel.* Appellate counsel may examine sealed materials subject to the following procedures:

(i) *Sealed materials released to trial government or defense counsel.* Materials presented or reviewed at trial and subsequently sealed, as well as materials reviewed *in camera,* released to trial government or defense counsel, and subsequently sealed, may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of their responsibilities under the Code, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility.

(ii) *Sealed materials reviewed in camera but not released to trial government or defense counsel.* Materials reviewed *in camera* by a military judge, not released to trial government or defense counsel, and subsequently sealed may be examined by reviewing or appellate authorities. After examination of said materials, the reviewing or appellate authority may permit examination by appellate counsel for good cause.

(C) *Disclosure.* Appellate counsel shall not disclose sealed material in the absence of:

(i) Prior authorization of the Judge Advocate General in the case of review under R.C.M. 1201(b) or 1112; or

(ii) Prior authorization of the appellate court before which a case is pending review under R.C.M. 1203 and 1204.

(D) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to R.C.M. 1112;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to R.C.M. 1201(b);

(iii) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(iv) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(v) The Justices of the United States Supreme Court and their professional staffs; and

(vi) Any other court of competent jurisdiction.

(5) *Examination of sealed materials.* For purposes of this rule, ''examination'' includes reading, inspecting, and viewing.

(6) *Disclosure of sealed materials.* For purposes of this rule, ''disclosure'' includes photocopying, photographing, disseminating, releasing, manipulating, or communicating the contents of sealed materials in any way.''

Section 2. **Part III of the Manual for Courts-Martial, United States, is amended as follows:**

(a) Mil. R. Evid. 311(c)(4) is amended to read as follows:

''(4) *Reliance on Statute or Binding Precedent.* Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acted in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment.''

(b) Mil. R. Evid. 311(d)(5)(A) is amended to read as follows:

''(A) *In general.* When the defense makes an appropriate motion or objection under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant; that the evidence was obtained by officials in objectively reasonable reliance on a statute or on binding precedent later held violative of the Fourth Amendment; or that the deterrence of future unlawful searches or seizures is not appreciable or such deterrence does not outweigh the costs to the justice system of excluding the evidence.''

(c) Mil. R. Evid. 505(l) is amended to read as follows:

''(l) *Record of Trial.* If under this rule any information is reviewed *in camera* by the military judge and withheld from the accused, the accused objects to such withholding, and the trial continues to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) and 1103A and attached to the record of trial as an appellate exhibit. Such material will be made available to reviewing and appellate authorities in accordance with R.C.M. 1103A. The record of trial with respect to any classified matter will be prepared under R.C.M. 1103(h) and 1104(b)(1)(D).''

(d) Mil. R. Evid. 506(m) is amended to read as follows:

''(m) *Record of Trial.* If under this rule any information is reviewed *in camera* by the military judge and withheld from the accused, the accused objects to such withholding, and the trial continues to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as any motions and any materials submitted in support thereof must be sealed in accordance with R.C.M. 701(g)(2) and 1103A and attached to the record of trial as an appellate exhibit. Such material will be made available to reviewing and appellate authorities in accordance with R.C.M. 1103A.''

(e) Mil. R. Evid. 513(e)(6) is amended to read as follows:

''(6) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 701(g)(2) or 1103A.''

(f) Mil. R. Evid. 514(e)(6) is amended to read as follows:

''(6) The motion, related papers, and the record of the hearing must be sealed

in accordance with R.C.M. 701(g)(2) or 1103A.''

Section 3. **Appendix 21, Analysis of Rules for Courts-Martial is amended as follows:**

(a) R.C.M. 704(c) is amended by inserting the following at the end:

''*2017 Amendment:* A new second paragraph was added to the Discussion after R.C.M. 704(c). The Response Systems to Adult Sexual Assault Crimes Panel's (RSP) June 2014 report recommended a study into grants of immunity for victim collateral misconduct in sexual assault cases. This new paragraph encourages convening authorities to respond to requests for immunity as soon as practicable if an expedited response is requested by the victim of an alleged offense. The RSP was a congressionally mandated panel tasked to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses.''

(b) R.C.M. 704 is amended by inserting the following at the end:

''*2017 Amendment:* Modifications were made throughout R.C.M. 704. The Response Systems to Adult Sexual Assault Crimes Panel's (RSP) June 2014 report recommended a study into grants of immunity for victim collateral misconduct in sexual assault cases. Subject to Service regulations, these modifications permit general court-martial convening authorities to delegate the authority to grant immunity to subordinate special court-martial convening authorities and no further. The RSP was a congressionally mandated panel tasked to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses.''

(c) R.C.M. 1103A is amended by inserting the following at the end:

''*2017 Amendment:* The Rule was reorganized and revised. It better addresses the two types of sealed materials commonly found in records of trial: Those materials that had been disclosed to trial government and defense counsel prior to sealing and those materials that were not disclosed to trial government or defense counsel prior to sealing. The changes also maintain consistency with R.C.M. 701(g)(2), *United States* v. *Romano,* 46 M.J. 269 (C.A.A.F. 1997), and *United States* v. *Rivers,* 49 M.J. 434 (C.A.A.F. 1998), by requiring the appellate court or reviewing authority to conduct a review of sealed materials on appeal which had been reviewed *in camera,* not disclosed to trial government or defense counsel, and subsequently sealed prior to permitting appellate counsel the opportunity to examine such sealed matters. Finally, the rule better defines the difference between ''examination'' and ''disclosure'' of sealed materials and the additional authorization needed prior to disclosure by appellate counsel.''

Section 4. **Appendix 22, Analysis of the Military Rules of Evidence is amended as follows:**

(a) Mil. R. Evid. 311 is amended by inserting the following at the end:

''*2017 Amendment:* The change to (c)(4) and(d)(5)(A) incorporates the Supreme Court's holding in *Davis* v. *United States,* 564 U.S. 229 (2011). In *Davis,* the Supreme Court found that the exclusionary rule did not apply because the police officer acted in objectively reasonable reliance on precedent that was binding on the officer at the time of the search. *Id.*''

Section 5. **The Discussion to Part II of the Manual for Courts-Martial, United States, is amended as follows:**

(a) A new Discussion is inserted immediately after R.C.M. 104(b)(1)(B) and before R.C.M. 104(b)(2) and reads as follows:

''This rule applies when the counsel in question has been detailed, assigned, or authorized to represent the client as a defense or special victims' counsel. Nothing in this rule prohibits supervisors from taking appropriate action for violations of ethical, procedural, or other rules, or for conduct outside the scope of representation.

''Special Victims' Counsel,'' as used in this rule, includes Victims' Legal Counsel within the Navy and Marine Corps.''

(b) The Discussion immediately following R.C.M. 308(a) and before R.C.M. 308(b) is amended to read as follows:

''When notice is given, a certificate to that effect on the Charge Sheet should be completed. *See* Appendix 4. However, in cases where charges are immediately referred after preferral, service of referred charges under R.C.M. 602 fulfills the notice requirement of this rule. In those cases, the notice certificate on the Charge Sheet need not be completed and should be lined out.''

(c) A new paragraph is added at the end of the Discussion immediately following R.C.M. 601(d)(2)(B) and before R.C.M. 601(e) and reads as follows:

''A specification under a charge may not be referred to a general court-martial unless the advice of the staff judge advocate concludes the specification alleges an offense under the Code, is warranted by the evidence, and a court-martial would have jurisdiction over the accused and the offense. *See* Article 34 and R.C.M. 406.''

(d) The first sentence of the Discussion immediately following R.C.M. 704(c) is amended to read as follows:

''Only general court-martial convening authorities or their designees are authorized to grant immunity.''

(e) The Discussion immediately following R.C.M. 704(c) is amended by inserting a new paragraph in between the first and second paragraphs, which reads as follows:

''When the victim of an alleged offense requests an expedited response to a request for immunity for misconduct that is collateral to the underlying offense, the convening authority should respond to the request as soon as practicable.''

(f) A new Discussion paragraph is inserted immediately prior to the existing paragraph following R.C.M. 704(c)(3) and reads as follows:

''A general court-martial convening authority has wide latitude under this section to exercise his or her discretion in delegating immunity authority. For example, a general court-martial convening authority may decide to delegate only the authority for a designee to grant immunity for certain offenses, such as a list of specific offenses or any offense not warranting a punitive discharge, while withholding authority to grant immunity for all others. A general court-martial convening authority may also delegate only authority for certain categories of grantees, such as victims of alleged sex-related offenses.''

(g) A new Discussion is inserted immediately following R.C.M. 1103A(a) and prior to R.C.M. 1103A(b) and reads as follows:

''Upon request or otherwise for good cause, a military judge may seal matters at his or her discretion.

The terms ''examination'' and ''disclosure'' are defined in (b)(5) and (6) of this rule.''

(h) A Discussion is re-inserted immediately following R.C.M. 1103A(b)(3) and prior to R.C.M. 1103A(b)(4) and reads as follows:

''A convening authority who has granted clemency based upon review of sealed materials in the record of trial is not permitted to disclose the contents of the sealed materials when providing a written explanation of the reason for such action, as directed under R.C.M. 1107.''

(i) A new Discussion is inserted immediately following R.C.M. 1103A(b)(4)(B)(ii) and prior to R.C.M. 1103A(b)(4)(C) and reads as follows:

''For disclosure procedures, see (b)(4)(C) of this rule.''

(j) A new Discussion is inserted immediately following R.C.M. 1103A(b)(4)(C)(ii) and prior to R.C.M. 1103A(b)(4)(D) and reads as follows:

''In general, the Judge Advocate General or an appellate court should authorize disclosure of sealed material when such disclosure is necessary for review. Authorizations may place conditions on disclosure.''

Section 6. **The Discussion to Part III of the Manual for Courts-Martial, United States, is amended as follows:**

(a) A new Discussion is inserted immediately after Mil. R. Evid. 506(b) and before Mil. R. Evid. 506(c) and reads as follows:

''For additional procedures concerning information contained in safety investigations, consult Service regulations and DoD Instruction 6055.07, ''Mishap Notification, Investigation, Reporting, and Record Keeping.'' ''

Dated: November 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–28630 Filed 11–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) Health Care Delivery Subcommittee will take place.

DATES:

Wednesday, December 14, 2016

8:00 a.m.–12:00 p.m. (Preparatory Session)
12:00 p.m.–2:00 p.m. (Open Session)
2:00 p.m.–3:00 p.m. (Preparatory Session)

ADDRESSES: Defense Health Headquarters (DHHQ), Pavilion Salon A, 7700 Arlington Blvd., Falls Church, Virginia 22042 (escort required; see guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting'').

FOR FURTHER INFORMATION CONTACT: The Executive Director (Acting) of the Defense Health Board is CAPT Juliann Althoff, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *juliann.m.althoff.mil@mail.mil*. For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *kendal.l.brown2.ctr@mail.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Electronic registration is available at the following link: *http://www.surveygizmo.com/s3/3191755/December-14-Meeting-Registration*.

Purpose of the Meeting

The purpose of the meeting is for the Health Care Delivery Subcommittee members to receive public comments concerning pediatric health care services during an open forum. The Subcommittee is examining opportunities to improve the overall provision of health care and related services for children of members of the Armed Forces to better promote the health of this beneficiary population and potentially realize cost savings for the Military Health System. The focus of this meeting will be on the primary and specialty care aspects of the tasking (excluding behavioral/mental health care) to the Subcommittee as outlined below:

- Identify the extent to which children receive developmentally appropriate and age appropriate health care services, including clinical preventive services, in both the direct care and purchased care components.
- Evaluate whether children have ready access to primary and specialty pediatric care.
- Address any issues associated with the TRICARE definition of ''medical necessity'' as it might specifically pertain to children and determine if the requirement for TRICARE to comply with Medicare standards disadvantages children from receiving needed health care.

Comments from the public can range from insight on pediatric-related health issues to personal accounts and objective input.

Agenda

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB Health Care Delivery Subcommittee meeting is open to the public from 12:00 p.m. to 2:00 p.m. on December 14, 2016. The DHB Health Care Delivery Subcommittee anticipates receiving public comments on pediatric-related health services issues. The DFO, in conjunction with the Subcommittee Chair, may restrict speaking time per person to an estimated 3–5 minutes. Additional comments, however, may be submitted in writing (see guidance in this **SUPPLEMENTARY INFORMATION**, ''Written Statements'' section). Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the December 14, 2016 meeting, as well as any other materials presented in the meeting, may be obtained at the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Thursday, December 8, 2016 to register and make arrangements for a DHHQ escort, if necessary. Public attendees requiring escort should arrive at the DHHQ Visitor's Entrance with sufficient time to complete security screening no later than 11:30 a.m. on December 14. To complete security screening, please come prepared to present two forms of identification, one of which must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB Health Care Delivery Subcommittee may do so in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB Health Care Delivery Subcommittee may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should not be longer than two type-written pages and address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the Subcommittee Chair and ensure they are provided to members of the Health Care Delivery Subcommittee before the meeting that is subject to this notice. After reviewing the written comments, the Subcommittee Chair and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the Subcommittee Chair, may allot time for members of the public to present their issues for review and discussion by the Health Care Delivery Subcommittee.

Dated: November 23, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–28674 Filed 11–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Lower Passaic River Ecosystem Restoration Project, Essex, Hudson, Passaic, and Bergen Counties, NJ: Feasibility Phase

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; Withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, New York District (NY District), is withdrawing its intent to prepare a Draft Environmental Impact Statement (EIS) for the Study. The Notice of Intent to prepare the Draft EIS was published in the Tuesday, December 28, 2004 issue of the **Federal Register** (69 FR 77744).

ADDRESSES: U.S. Army Corps of Engineers, New York District, Planning Division, Environmental Analysis Branch, 26 Federal Plaza, Room 2151, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Diana Kohtio, Project Biologist, at *diana.m.kohtio@usace.army.mil* or 917.790.8619.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers, NY District published a notice of intent to prepare a Draft Environmental Impact Statement in the December 28, 2004 issue of the **Federal Register** (FR Doc. 2004–28332). In an effort to streamline work in early 2015, the U.S. Army Corps of Engineers, New York District, consolidated multiple parallel USACE ecosystem restoration feasibility studies into the Hudson Raritan Estuary Ecosystem Restoration Feasibility Study (HRE) Study.

This streamlining is consistent with the Civil Works Transformation Initiative and Specific, Measurable, Attainable, Risk Informed, Timely (SMART) Planning principles, and maximizes efficiencies, resources and benefits. The other feasibility studies include:

- HRE—Lower Passaic River Ecosystem Restoration Feasibility Study;
- HRE—Hackensack Meadowlands Ecosystem Restoration Feasibility Study;
- Flushing Creek and Bay Ecosystem Restoration Feasibility Study;
- Bronx River Basin Ecosystem Restoration Feasibility Study;
- Jamaica Bay, Marine Park, Plumb Beach Ecosystem Restoration Feasibility Study.

As such, a Draft EIS is no longer necessary. Each Feasibility Study was at a different stage prior to the decision to consolidate into the HRE Feasibility Report/Environmental Assessment (FR/EA). The planning was conducted independently with their non-federal sponsor and resulted in the selection of specific recommendations within each watershed. These combined efforts resulted in the recommendations included in the broader HRE FR/EA. The HRE FR/EA will be prepared and circulated for review by agencies and the public. The New York District invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental assessment. Comments received, including the names and addresses of those who comment, will be considered part of the public record for this proposal. As a result of the process, if it is determined that the project may have significant impacts, the EIS process will be reinitiated and a NOI published.

Peter Weppler,

Chief, Environmental Analysis Branch.

[FR Doc. 2016–28730 Filed 11–28–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hackensack Meadowlands Ecosystem Restoration Project, Hackensack Meadowlands District, Bergen and Hudson Counties, NJ: Feasibility Phase

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, New York District (NY District), is withdrawing its intent to prepare a Draft Environmental Impact Statement (EIS) for the Study. The Notice of Intent to prepare the Draft EIS was published in the Tuesday, December 28, 2004 issue of the **Federal Register** (69 FR 77744).

ADDRESSES: U.S. Army Corps of Engineers, New York District, Planning Division, Environmental Analysis Branch, 26 Federal Plaza, Room 2151, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Diana Kohtio, Project Biologist, at

diana.m.kohtio@usace.army.mil or 917.790.8619.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers, NY District published a notice of intent to prepare a Draft Environmental Impact Statement in the December 28, 2004 issue of the **Federal Register** (FR Doc. 2004–28331). In an effort to streamline work in early 2015, the U.S. Army Corps of Engineers, New York District, consolidated multiple parallel USACE ecosystem restoration feasibility studies into the Hudson Raritan Estuary Ecosystem Restoration Feasibility Study (HRE) Study.

This streamlining is consistent with the Civil Works Transformation Initiative and Specific, Measurable, Attainable, Risk Informed, Timely (SMART) Planning principles, and maximizes efficiencies, resources and benefits. The other feasibility studies include:

- HRE—Lower Passaic River Ecosystem Restoration Feasibility Study;
- HRE—Hackensack Meadowlands Ecosystem Restoration Feasibility Study;
- Flushing Creek and Bay Ecosystem Restoration Feasibility Study;
- Bronx River Basin Ecosystem Restoration Feasibility Study;
- Jamaica Bay, Marine Park, Plumb Beach Ecosystem Restoration Feasibility Study.

As such, a Draft EIS is no longer necessary. Each Feasibility Study was at a different stage prior to the decision to consolidate into the HRE Feasibility Report/Environmental Assessment (FR/EA). The planning was conducted independently with their non-federal sponsor and resulted in the selection of specific recommendations within each watershed. These combined efforts resulted in the recommendations included in the broader HRE FR/EA. The HRE FR/EA will be prepared and circulated for review by agencies and the public. The New York District invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental assessment. Comments received, including the names and addresses of those who comment, will be considered part of the public record for this proposal. As a result of the process, if it is determined that the project may have significant impacts, the EIS process will be reinitiated and a NOI published.

Peter Weppler,

Chief, Environmental Analysis Branch.

[FR Doc. 2016–28729 Filed 11–28–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Anasys Instruments

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Anasys Instruments, a revocable, nonassignable, exclusive license to practice in the field of use of photothermal infrared spectroscopy and microscopy of solids, liquids, and gases in the United States, the Government-owned inventions described in U.S. Patent No. 9,091,594: Chemical Mapping Using Thermal Microscopy at the Micro and Nano Scales, Navy Case No. 101,493 and U.S. Patent Application No. 14/748,430: Chemical Mapping Using Thermal Microscopy at the Micro and Nano Scales, Navy Case No. 101,493 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 14, 2016.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Charles Steenbuck, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *NRL1004@research.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 22, 2016.

C.D. Mora,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–28676 Filed 11–28–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education Meeting Notice

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Announcement of closed video/teleconference meetings.

SUMMARY: This notice sets forth the schedule of an upcoming closed meeting of NACIE. Notice of the meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act. In order to ensure there are sufficient members in attendance to meet the quorum requirement, this notice is being published in less than 15 calendar days prior to the scheduled meeting dates.

DATES: The NACIE video/teleconference meetings will be held on November 29, 2016 and November 30, 2016, from 1:00 p.m.–4:00 p.m. Eastern Daylight Saving Time.

FOR FURTHER INFORMATION CONTACT: Tina Hunter, Designated Federal Official, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: 202–205–8527. Fax: 202–205–0310.

SUPPLEMENTARY INFORMATION: NACIE's Statutory Authority and Function: NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), 20 U.S.C. 7471. NACIE is governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, which sets forth requirements for the formation and use of advisory committees. NACIE is established within the Department of Education (Department) to advise the Secretary of Education (Secretary) on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults, including any program established under Title VI, Part A of the ESEA. NACIE also makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs. Finally, NACIE submits to the Congress, not later than June 30 of each year, a report on the activities of NACIE, including recommendations that NACIE considers appropriate for the improvement of Federal education

programs that include Indian children or adults as participants, or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Meeting Agenda: The purpose of the meetings is to discuss recommendations for the Secretary for filling the recently vacated position of Director of Indian Education. NACIE's discussions during the closed meetings will pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of Section 552b(c) of Title 5 of the United States Code.

Access to Records of the Meeting: The Department will post a closed meeting report on NACIE's Web site.

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.

Ary Amerikaner,

Deputy Assistant Secretary, Delegated the Duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2016–28713 Filed 11–28–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Final 2025 Salt Lake City Area Integrated Projects Power Marketing Plan

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Notice of the Final 2025 Power Marketing Plan for the Salt Lake City Area Integrated Projects.

SUMMARY: Western Area Power Administration (WAPA), Colorado River Storage Project Management Center (CRSP MC), a Federal power marketing agency of the Department of Energy, announces the Final 2025 Power Marketing Plan (2025 Marketing Plan) for the Salt Lake City Area Integrated Projects (SLCA/IP). The Post-1989 General Power Marketing and Allocation Criteria (Post-1989 Plan), February 7, 1986, as extended June 25, 1999, will expire on September 30, 2024. After consideration of the public comments received, WAPA has decided to implement the Proposed 2025 Marketing Plan with the exception that WAPA will not create a new, 2-percent resource pool for potential new customers. This **Federal Register** notice is published to announce WAPA's decision for the Final 2025 Marketing Plan, respond to the comments received on the Proposed 2025 Marketing Plan, and specify the terms and conditions under which WAPA will market SLCA/IP firm hydroelectric resources beginning October 1, 2024.

DATES: The 2025 Marketing Plan will become effective December 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Parker Wicks, Public Utilities Specialist, or Mr. Steve Mullen, Public Utilities Specialist, Western Area Power Administration, CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, telephone (801) 524–5493, or email to *SLIPPost2024@wapa.gov*. Information can also be found at *https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx*.

SUPPLEMENTARY INFORMATION:

Brief descriptions of the projects included in the SLCA/IP are provided below:

Colorado River Storage Project (CRSP)

Authorized by Congress in 1956, the CRSP and participating projects initiated the comprehensive development and use of water resources of the Upper Colorado River. The CRSP is comprised of the Glen Canyon, Flaming Gorge, Blue Mesa, Crystal, and Morrow Point dams and powerplants. CRSP storage units stabilize the erratic flows of the Colorado River and its tributaries so annual water delivery commitments to the Lower Colorado River Basin, as well as to farmers, municipalities, and industries in the Upper Basin, can be met. Delivery of this water to consumers is accomplished, in part, through the participating projects discussed below, and additional project development may occur in future years. Initial hydroelectric generation began at the CRSP facilities in 1963. The maximum operating capacity of the five original CRSP powerplants is currently approximately 1,760 MW. The average annual generation from 1994 through 2014 was approximately 5,208,238 MWh.

Participating Projects

Seedskadee Project (Fontenelle Powerplant): The Seedskadee Project is in the Upper Green River Basin in southwestern Wyoming. The Fontenelle Dam, powerplant, and reservoir are the principal features of the Seedskadee Project. The powerplant commenced operation in May 1968. The maximum operating capacity of Fontenelle Powerplant is 10 MW. The average annual generation from 1994–2014 was 53,477 MWh.

Dolores Project (McPhee Dam and Towaoc Canal Powerplants): The Dolores Project was authorized by the Colorado River Basin Act of September 30, 1968, as a participating project under the CRSP Act. The maximum operating capacity of the two powerplants is 12.8 MW, and the combined average annual output of McPhee Dam and Towaoc Canal powerplants from 1994–2014 was 18,161 MWh.

Integrated Projects

WAPA consolidated and operationally integrated the Collbran and Rio Grande projects with CRSP beginning on October 1, 1987. These integrated projects have retained their separate financial obligations for repayment; however, the SLCA/IP rate is set to recover revenues to meet the repayment requirements of all projects. The maximum operating capacity of the eleven SLCA/IP powerplants is 1,818.6 MW, and the average annual generation from 1994–2014 was about 5,635,057 MWh. The SLCA/IP resources are currently marketed to approximately 135 long-term customers, and many more electric service providers benefit from this power indirectly through parent organizations that are direct customers of the SLCA/IP. Existing SLCA/IP contracts will terminate at the end of the September 2024 billing period.

Collbran Project (Upper Molina and Lower Molina Powerplants): The Colbran Project was authorized in 1952 and has been in service since 1962. The maximum operating capacity of the two powerplants is presently 13.5 MW. The average annual generation from 1994–2014 was 41,915 MWh.

Rio Grande Project (Elephant Butte Powerplant): The Rio Grande Project was authorized in 1905, and the powerplant went into service in 1940. The maximum operating capacity of the Elephant Butte Powerplant is 27.0 MW. The average annual generation was 66,743 MWh from 1994–2014.

Background Information

The Post-1989 Plan provided the power marketing principles used to market what is now referred to as the SLCA/IP firm hydropower resources. The Firm Electric Service (FES) contracts associated with the Post-1989 Plan were initially set to expire October 1, 2004, and were extended to September 30, 2024.

WAPA published its Proposed 2025 Marketing Plan, 80 FR 78222 (December 16, 2015), and held a Public Information Forum on January 14, 2016, in Salt Lake City, Utah, and a Public Comment Forum on February 17, 2016, in Salt Lake City, Utah, to provide the public an opportunity to submit comments. During these meetings, the CRSP MC announced it would complete and post a preliminary determination of the 2025 SLCA/IP Marketable Resource, which would help determine if WAPA would offer a 2-percent New Customer Power Pool, as proposed. WAPA extended the comment period, 81 FR 17163 (March 28, 2016), to May 31, 2016, to allow customers the opportunity to comment on the analysis and to make additional comments about the Proposed 2025 Marketing Plan. On May 10, 2016, the CRSP MC posted notice on its Web site that, based on its Analysis of Potential Marketable Resource, insufficient sustainable hydro power (SHP) energy existed to offer a New Customer Power Pool.

WAPA received oral comments at the public comment forum as well as 18 written comment letters during the comment period. WAPA's responses to the comments received are included in this notice.

Response to Comments Received on the Proposed 2025 Marketing Plan

Right to Re-Evaluate Allocations and Contract Term

Comment: Commenters supported a 40-year contract term for FES contracts. Several commenters did not support the concept of a reopener, or re-evaluation, at a 20-year interval during the contract period. Several commenters supported a 20-year contract term with an automatic right of renewal for an additional 20 years, without resource reduction considerations, if favorable hydrology exists.

Response: In 2017, WAPA will begin the process of offering new FES contracts with a 40-year length of contract. However, depending on when contracts are actually negotiated and offered for signature, the period of performance may be less than 40 years. For example, a new contract executed in January 2017 would be let for 40 years and terminate in January 2057, while the period of performance and delivery of firm electric service would be approximately 33 years—as the existing contract remains in effect until September 30, 2024. This is due entirely to the 40-year limit to both length of contract and period of performance established by the Reclamation Project Act of 1939. Moreover, WAPA agrees with commenters and will not offer allocations for the first 20 years and then require a re-evaluation of the allocations later. WAPA will work with its customers to ensure that the FES contracts provide sufficient flexibility to address issues of changing hydrology or resource availability.

New Resource Pool

Comment: Several commenters opposed the creation of a 2-percent resource pool for new customers. Several commenters supported the creation of a new resource pool only if power is available without reduction to existing Post-1989 Plan customers and only for the benefit of tribal customers not already receiving SLCA/IP power.

Response: Modeling of SLCA/IP resources by the CRSP MC indicates there is no additional marketable capacity and energy available. WAPA will not offer a new customer resource pool under the 2025 Marketing Plan.

Hydropower Allocation to Tribe Served by SLCA/IP Customer

Comment: A Native American tribe stated that it did not receive an allocation during WAPA's prior remarketing, but instead receives the benefits of the hydropower allocation through its local electric cooperative. The tribe stated that Indian self-determination must be furthered and WAPA should recognize that the benefits of receiving Federal preference power may potentially be greater for smaller tribes. The tribe requested WAPA consider allocating directly to the tribe.

Response: WAPA does not have additional marketable capacity and energy to create an allocation for new customers. However, WAPA will work directly with the tribe to ensure Indian self-determination is furthered at all levels through whatever means WAPA has available—such as discussing arrangements made with the tribe's servicing utility.

Request for Additional Resources

Comment: A commenter requested an increase in the amount of energy it receives to meet its growing loads and also stated that additional energy should be provided to correct for load factor issues.

Response: WAPA is unable to provide additional energy because modeling of SLCA/IP resources indicate there is no additional marketable capacity and energy available. WAPA will extend the seasonal firm capacity allocations, referenced in the FES contracts as the Contract Rate of Delivery (CROD), along with the associated seasonal energy allocations, to the existing SLCA/IP firm power customers.

Priority of Preference in Proposed 2025 Marketing Plan

Comment: Request for clarification on priority consideration for entities satisfying the marketing criteria.

Response: WAPA will not offer a new customer resource pool under the 2025 Marketing Plan; but to reiterate the clarification given during the comment period, priority consideration for the 2-percent resource pool for potential new customers under the Proposed Marketing Plan would have been provided in the following order: (A) Federally recognized Native American tribes; (B) Municipal corporations and political subdivisions, including irrigation or other districts, municipalities, and other governmental organizations, electric cooperatives and public utilities, other than electric utilities, that are recognized as utilities by their applicable legal authorities, are nonprofit in nature, have electrical facilities, and are independently governed and financed; (C) Other eligible applicants.

Distribution of Additional Resources

Comment: Should an increase in SLCA/IP resources ever occur, several commenters supported a pro-rata distribution of any additional resources to existing customers while several other commenters supported prioritizing new tribal customers over new non-tribal customers.

Response: If additional marketable resources become available, WAPA will determine, through appropriate procedures and in consultation with its customers, how to allocate those additional resources. Moreover, WAPA will work with its customers to ensure that the FES contracts provide sufficient flexibility to address issues with

changing hydrology or resource availability.

Marketing Area

Comment: Several commenters supported the Post-1989 Plan marketing area and requested WAPA make no changes to the Northern and Southern Division areas.

Response: WAPA concurs and will preserve the Post-1989 Plan marketing area. No changes will be made to the Northern and Southern Division areas in the 2025 Marketing Plan.

Adjustment of Contract Rate of Delivery

Comment: Several commenters do not support an overall reduction in the contracted customer shares, at any time. Several commenters support WAPA having the right to adjust the CROD and associated energy on 5 years written notice, provided WAPA collaborates and meets with Preference Customers prior to giving any such notice.

Response: WAPA will reserve the right to adjust, through appropriate procedures and in consultation with its customers, the CROD on 5 years advance written notice in response to changes in hydrology and river operations.

Service Seasons

Comment: Several commenters support using the SLCA/IP definition currently implemented for the Winter Season (October–March) and Summer Season (April–September). One commenter supports the flexibility to determine monthly energy patterns within its seasonal allocation.

Response: WAPA will continue the use of existing summer and winter seasons and work with its customers to determine if monthly energy allocation patterns could be adjusted within a season to better match customer needs and hydropower availability.

Replacement Power

Comment: Several commenters indicated support for the capacity replacements programs currently in place through Customer Displacement Power (CDP) and Western Replacement Power (WRP) programs.

Response: WAPA appreciates the commenters' support for the CDP and WRP programs. The 2025 Marketing Plan FES contracts will continue to include CDP and WRP programs.

Transmission Availability for Replacement Power

Comment: Several commenters support the sale of unused firm transmission on a non-firm basis when that capacity is not used to deliver customer allocations or customer CDP/WRP so long as any revenue generated from such sales is applied in order to reduce the rate for CRSP customers.

Response: WAPA will continue to include all projected revenues during the rate calculation process. Unused transmission will be made available per the Open Access Transmission Tariff (OATT) when that capacity is not needed for delivery of WRP, CDP, or the customers' allocations.

Use of Renewables

Comment: Has WAPA considered the use of renewable energy to make up for the loss of hydropower to Post-2025 customers?

Response: WAPA has considered the use of renewable energy as firming resources in the past and will in the future. If WAPA experiences a projected decrease in marketable hydropower resources, it will consider firming purchases from available resources, including renewables, in accordance with its power marketing authority. However, no such decrease is currently projected. WAPA has a long-term purchase power policy, as set forth in 10 CFR part 905—subpart E, whereby WAPA will develop criteria to consider long-term power purchases, which can include renewable resources, to meet long-term resource needs. Any long-term resource acquisition would be made in close consultation with the customers.

Renewable Energy Credits

Comment: CRSP customers should receive Renewable Energy Credits (REC) in manner consistent with the Loveland Area Projects (LAP) REC program.

Response: Consistent with WAPA's REC policy, the SLCA/IP generating units are registered with Western Renewable Energy Generation Information System (WREGIS), and the CRSP MC uploads monthly generation data. The monthly generation loaded into the WREGIS system creates one REC for every megawatthour of energy produced. Based on the amount generated from SLCA/IP hydropower facilities during the preceding calendar year, REC are dispersed annually to each customer proportionally based on its SLCA/IP allocation. Unlike the LAP, there is no special consideration for the smaller hydro facilities versus the large facilities. However, future changes to the REC distribution policy can be discussed with the customers for possible implementation.

Extension of Existing Contracts

Comment: Several commenters support the extension of the customers' existing CROD allocations for the contract term. Several commenters suggested customers should be offered amended and restated contracts, developed with appropriate diligence and expedience, to extend the existing contracts at the existing CROD and associated energy commitments.

Response: WAPA will offer new contracts that maintain the CROD allocations, with associated energy, to the existing SLCA/IP FES customers. WAPA will not offer amended and restated contracts, but will work with existing FES customers to develop a new contract.

Contract Development and Implementation

Comment: Draft contracts should be developed with appropriate diligence and expedience and with minimal changes from the existing contract terms and conditions. Customer meetings to discuss the draft contracts should be limited and follow a formal process that includes notice and comment periods of reasonable duration and additional agency/customer/applicant dialogue on an individualized basis unless such topics advance to affect broader customer interests.

Response: WAPA will collaborate with the FES customers on contract development while not impacting timely contract implementation. WAPA will provide timely notice and allow for reasonable periods of informal review and comments in order to facilitate customer participation.

General Power Contract Provisions

Comment: Several commenters support the continued use of the current General Power Contract Provisions (GPCP), dated September 1, 2007, for the proposed contract.

Response: While specific contract provisions are outside of the 2025 Marketing Plan, WAPA intends to use the GPCP dated September 1, 2007.

Creditworthiness Procedures

Comment: The inclusion of ''creditworthiness'' provisions in new FES contracts was not supported by commenters since the existing customers have a demonstrated history of paying WAPA timely, and no basis exists for WAPA to justify insertion of this type of provision.

Response: Specific contractual provisions such as creditworthiness provisions are beyond the scope of the 2025 Marketing Plan. However, existing WAPA policy requires creditworthiness provisions in FES contracts and it is the intent of CRSP to include them in its FES contracts.

Customer Profile Data

Comment: Only new customers should submit customer profile data; existing customers should not be required to submit customer profile data or applications for power.

Response: WAPA concurs and no customer load profile data or applications will be required from existing customers. Furthermore, there will be no new customers because modeling of SLCA/IP resources indicate there is no additional marketable capacity and energy available.

Methods Report

Comment: Commenters questioned some of the methodologies and assumptions WAPA made in determining the availability of future hydropower generation, as explained in the Methodology for SLCA/IP Resource Analysis for Consideration in the Development of the 2025 Marketing Plan (Methods Report). These commenters questioned the use of certain hydrologic traces, particular assumptions about weekend versus weekday load patterns, and requested that only the current operating criteria be used for modeling purposes.

Response: WAPA appreciates the interest and review of its Methods Report. After reviewing the comments, WAPA does not believe the items questioned would affect its decision to use the existing power and energy commitments in the 2025 Marketing Plan because these would result in only minimal changes to the modeling results.

Hydropower Production Scenarios

Comment: Several commenters support WAPA proposing a variety of Marketing Plan approaches that address differing hydroelectric power production scenarios. Several commenters noted WAPA's reliance on a specific Department of the Interior (DOI) proposed Environmental Impact Statement (EIS) methodology in WAPA's resource analysis and urged WAPA to avoid reliance on any specific environmental-mitigation proposal in advance of any final DOI decision on that matter.

Response: There are various impacts to hydropower availability such as drought, maintenance issues, transmission availability, and water delivery requirements in addition to operational changes made to mitigate potential environmental impacts. WAPA will continue to work with its customers to ensure that the FES contracts provide sufficient flexibility to address issues with changing hydrology and resource availability. For the Long-term Experimental and Management Plan (LTEMP) EIS, DOI has identified a preferred alternative, and WAPA is using this alternative for planning purposes only. If DOI implements a Glen Canyon Dam operation that significantly differs from the preferred alternative, WAPA will consider a change to its 2025 Marketing Plan.

Modeling of Marketable Resources

Comment: Several commenters requested information describing the fundamental differences among GTMax, GTMax Lite, and GTMax Superlite v1 software platforms WAPA used to model hydropower.

Response: The GTMax model uses an older platform and architecture, which can only model 1 year at a time—under a single hydrological condition. GTMax Lite performs the same functions as GTMax but only simulates hydropower operations at Glen Canyon Dam rather than all of the CRSP facilities. This allows for various operational scenarios at Glen Canyon Dam to be modeled quickly. The GTMax Superlite model used by WAPA to model hydropower availability has all of the features and capabilities of the full GTMax model. The advantage of using GTMax Superlite for the 2025 Marketing Plan study is that it allows simulation and optimization of decades of operations, under numerous hydrological conditions, in a relatively short amount of time.

Final 2025 Power Marketing Plan and Marketing Criteria

WAPA's 2025 Marketing Plan will provide the existing CROD commitments with associated energy to current SLCA/IP FES customers as set forth in the existing FES contracts, which implemented the Post-1989 General Power Marketing Criteria and Post-2004 PMI. The 2025 Marketing Plan principles are as follows:

Final 2025 Marketing Plan Principles

1. *Contract Term:* The maximum 40-year contract term, as provided for in the Reclamation Project Act of 1939, will be used for FES contracts.

2. *Existing Marketable Resource:* WAPA will extend the CROD commitments with associated energy to the existing SLCA/IP FES customers as set forth in the existing FES contracts, which implemented the Post-1989 General Power Marketing Criteria and Post-2004 PMI.

3. *New Resource Pool:* Modeling of SLCA/IP resources by WAPA indicates there is no additional marketable capacity and energy available. WAPA will not establish a new customer resource pool under the 2025 Marketing Plan.

4. *Firm Electric Service Contract Provisions:* Existing SLCA/IP FES contracts will serve as the basis for new FES contracts. CDP and WRP contract provisions will be included in the new FES contracts.

5. *Benefit Crediting Contracts:* For those Native American tribes that do not operate their own electric utilities, Benefit Crediting Contracts will be available to deliver the benefit of the Federal hydropower allocation to those tribes.

6. *Marketing Area:* The SLCA/IP marketing area remains unchanged, which is divided into Northern and Southern Divisions.

A. The Northern Division consists of the states of Colorado, New Mexico, Utah, and Wyoming; the City of Page, Arizona; a portion of the area in Arizona which lies in the drainage area of the Upper Colorado River Basin to be served by the Navajo Tribal Utility Authority; and White Pine County and portions of Elko and Eureka counties in Nevada.

B. The Southern Division consists of the remaining portion of the state of Arizona and that part of the state of Nevada in Clark, Lincoln, and Nye counties that comprise the southern portion of the state.

7. *Hydrology and River Operations Withdrawal Provision:* WAPA will continue to reserve the right to adjust, at its discretion and sole determination, the CROD on 5 years advance written notice in response to changes in hydrology and river operations. Any such adjustments would occur after an appropriate public process.

8. *Service Seasons:* Summer and winter seasons remain unchanged.

A. Summer Season: The 6-month period from the first day of the April billing period through the last day of the September billing period in any calendar year.

B. Winter Season: The 6-month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

Availability of Information

Documents developed or retained by WAPA during this public process will be available by appointment for inspection and copying at the CRSP MC, located at 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah. WAPA will post information concerning the Final 2025 Marketing Plan on its Web site at: *https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx*.

Procedural Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.,* the Council on Environmental Quality Regulations for implementing NEPA, 40 CFR parts 1500 through 1508, and the Integrated DOE NEPA Implementing Procedures, 10 CFR part 1021, WAPA has determined this action is categorically excluded from the preparation of an environmental assessment or an EIS.

Determination Under Executive Order 12866

WAPA 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.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601, *et seq.,* requires a Federal agency to perform a regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking for any proposed rule, unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. In defining the term ''rule,'' the RFA specifies that a ''rule'' does not include ''a rule of particular applicability relating to rates [and] services . . . or to valuations, costs or accounting, or practices relating to such rates [and] services . . . .'' 5 U.S.C. 601. WAPA has determined that this action relates to rates or services offered by WAPA and, therefore, is not a rule within the purview of the RFA.

Dated: November 18, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–28690 Filed 11–28–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2015–3; FRL–9955–79–Region 4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Tennessee Valley Authority—Bull Run (Anderson County, Tennessee)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: The EPA Administrator signed an Order, dated November 10, 2016, granting petition to object to Clean Air Act (CAA) title V operating permit issued by the Tennessee Department of Environment and Conservation (TDEC) to the Tennessee Valley Authority (TVA) Bull Run facility located in Clinton, Anderson County, Tennessee. This Order constitutes a final action on the petition submitted by Sierra Club and Environmental Integrity Project (Petitioners) and received by EPA on September 29, 2015.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air, Pesticides and Toxics Management Division; 61 Forsyth Street SW.; Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *https://www.epa.gov/sites/production/files/2016-11/documents/tva_bull_run_order_granting_petition_to_object_to_permit_.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted a petition regarding the aforementioned TVA Bull Run facility, requesting that EPA object to the CAA title V operating permit (#01–0009/567519). Petitioners alleged that the permit was not consistent with the CAA because it lacks sufficient monitoring to assure compliance with the opacity limit established pursuant to Tennessee Comprehensive Rules & Regulations 1200–03–05–.01.

On November 10, 2016, the Administrator issued an Order granting the petition. The Order explains EPA's rationale for granting the petition.

Dated: November 18, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–28742 Filed 11–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0246; FRL—9955–81–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Requirements for New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Information Requirements for New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder (Revision),'' EPA ICR Number 2345.04, OMB Number 2060–00641, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2016. Public comments were previously requested via the **Federal Register** (81 FR 65634) on September 23, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before December 29, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number Docket ID No. EPA–HQ–OAR–2013–0246, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@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, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information, visit *http://www.epa.gov/dockets.*

Abstract: For this ICR, EPA is seeking a revision to an existing package with a three year extension. Title II of the Clean Air Act, (42 U.S.C. 7521 *et seq.;* CAA), charges the Environmental Protection Agency (EPA) with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Under this ICR, EPA collects information necessary to (1) issue certificates of compliance with emission statements, and (2) verify compliance with various programs and regulatory provisions pertaining to marine compression-ignition engines with a specific engine displacement at or above 30 liters per cylinder, also referred to as Category 3 engines. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. There are recordkeeping requirements of up to eight years. The Act also mandates EPA to verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these engines comply with emission standards throughout their useful lives.

Under the Production Line Testing Program (''PLT Program''), manufacturers of Category 3 engines are required to test each engine at the sea trial of the vessel in which the engine is installed or within the first 300 hours of operation, whichever comes first. This self-audit program allows manufacturers to monitor compliance and minimize the cost of correcting errors through early detection. In addition, owners and operators of marine vessels with Category 3 engines must record certain information and send minimal annual notifications to EPA to show that engine maintenance and adjustments have not caused engines to be noncompliant. From time to time, EPA may test in-use engines to verify compliance with emission standards throughout the marine engine's useful life and may ask for information about the engine family to be tested.

Proprietary information is kept confidential in accordance with the Freedom of Information Act (FOIA), EPA regulations at 40 CFR parts 2 and 1042.915, and class determinations issued by EPA's Office of General Counsel. Non-confidential business information may be disclosed as requested under FOIA. That information may be used by trade associations, environmental groups, and the public. Most of the information is collected in electronic format and stored in CD's databases.

Form Numbers: 5900–90 (Annual Production Report); 5900–297 (PLT CumSum Report); 5900–298 (PLT Non-CumSum Report); 5900–124 (Application for Certification).

Respondents/affected entities: Manufacturers, owners or operators of marine compression-ignition engines above 30 liters per cylinder and the vessels in which those engines are installed, within the following North American Industry Classification System (NAICS) codes: 333618 (Other Engine Equipment Manufacturing), 336611 (Manufacturers of Marine Vessels); 811310 (Engine Repair and Maintenance); 483 (Water transportation, freight and passenger).

Respondent's obligation to respond: Required to obtain or retain a benefit. Manufacturers must respond to this collection if they wish to sell and/or operate their Category 3 engines in the US, as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521) and 40 CFR part 1042. Certification reporting is mandatory (Section 206(a) of CAA (42 U.S.C. 7521) and 40 CFR part 1042, subpart C). PLT reporting is mandatory (Section 206(b)(1) of CAA and 40 CFR part 1042, subpart D).

Estimated number of respondents: 201 (total).

Frequency of response: Quarterly, Annually, On Occasion, depending on the type of response.

Total estimated burden: 24,813 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,012,094 (per year), includes an estimated $760,734 annualized capital or maintenance and operational costs.

Changes in the Estimates: There is no change in the total estimated burden from the burden currently identified in the OMB Inventory of Approved ICR Burdens.

Courtney Kerwin,

Director, Regulatory Supprt Division.

[FR Doc. 2016–28672 Filed 11–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0630; FRL–9955–01]

Agency Information Collection Activities; Proposed Renewal of EPA ICR No. 0616.12; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Compliance Requirement for Child-Resistant Packaging'' and identified by EPA ICR No. 0616.12 and OMB Control No. 2070–0052, represents the renewal of an existing ICR that is scheduled to expire on July 31, 2017. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before January 30, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0630, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: Joe Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9072; email address: *hogue.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Compliance Requirement for Child-Resistant Packaging.

ICR number: EPA ICR No. 0616.12.

OMB control number: OMB Control No. 2070–0052.

ICR status: This ICR is currently scheduled to expire on July 31, 2017. 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. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection program is designed to provide the EPA with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Registrants must certify to the Agency that the packaging or device meets these standards. Responses to the collection of information are mandatory. Section 25(c)(3) of FIFRA authorizes EPA to establish standards for packaging of pesticide products and pesticidal devices to protect children and adults from serious illness or injury resulting from accidental ingestion or contact. Unless a pesticide product qualifies for an exemption, if the product meets certain criteria regarding toxicity and use, it must be sold and distributed in child-resistant packaging. Compliance regulations are contained in 40 CFR part 157.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 114 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are entities involved in manufacturing of pesticide chemicals, wholesale merchandising of pesticide products, or pest management activities. The North American Industrial Classification System (NAICS) codes for respondents under this ICR include 325320 (Pesticide and other Agricultural Chemical Manufacturing), 424690 (Other Chemical and Allied Products Merchant Wholesalers), and 561710 (Exterminating and Pest Control Services).

Estimated total number of potential respondents: 31.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 3,535 hours.

Estimated total annual costs: $249,292. This includes an estimated burden cost of $249,292 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is a decrease of 1,972 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updating of burden estimates for this collection, including an increase in the estimated burden per response, and a decrease in the number of responses per year. This change is an adjustment.

IV. What is the next step in the process for this ICR?

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 pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 15, 2016.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–28739 Filed 11–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0393; FRL–9953–53]

Registration Review; Draft Human Health and/or Ecological Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and ecological risk assessments for the

registration review of aliphatic esters, cyclanilide, cymoxanil, and certain other pesticides and opens a public comment period on these documents. This notice also announces both the opening of the registration review docket and the availability of the registration review draft human health and ecological risk assessments for aliphatic esters and momfluorothrin. EPA Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all uses of the pesticides herein. After reviewing comments received during the public comment period, EPA will issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides herein. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before January 30, 2017.

ADDRESSES: Submit your comments, docket identification (ID) number EPA–HQ–OPP–2015–0393 by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 of Unit III.

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in Table 1 of Unit III.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 of Unit III pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registration for the pesticides listed in Table 1 to ensure that it continues to satisfy the FIFRA standard for registration—that is, that these chemicals can still be used without unreasonable adverse effects on human health or the environment.

TABLE 1–DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Contact and contact information
Aliphatic Esters, 4005	EPA–HQ–OPP–2015–0084	Brian Kettl, *kettl.brian@epa.gov*, (703) 347–0535.

TABLE 1–DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT—Continued

Registration review case name and No.	Docket ID No.	Contact and contact information
Bifenthrin, 7402	EPA–HQ–OPP–2010–0384	Marquea King, *king.marquea@epa.gov*, (703) 305–7432.
Cyclanilide, 7018	EPA–HQ–OPP–2011–0153	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Cyfluthrins (& beta), 7405	EPA–HQ–OPP–2010–0684	Garland Waleko, *waleko.garland@epa.gov*, (703) 308–8049.
Cymoxanil, 7023	EPA–HQ–OPP–2012–0148	Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175.
Cypermethrin (alpha & zeta), 7218/ 2130.	EPA–HQ–OPP–2012–0167	Susan Bartow, *bartow.susan@epa.gov*, (703) 603–0065.
Cyphenothrin, 7412	EPA–HQ–OPP–2009–0842	Margaret Hathaway, *hathaway.margaret@epa.gov*, (703) 305–5076.
D-phenothrin, 0426	EPA–HQ–OPP–2011–0539	James Parker, *parker.james@epa.gov*, (703) 306–0469. Rachel Ricciardi, *ricciardi.rachel@epa.gov*, (703) 347–0465.
Deltamethrin, 7414	EPA–HQ–OPP–2009–0637	Bilin Basu, *basu.bilin@epa.gov*, (703) 347–0455.
Dimethomorph, 7021	EPA–HQ–OPP–2013–0045	Nathan Sell, *sell.nathan@epa.gov*, (703) 347–8020.
Esfenvalerate, 7406	EPA–HQ–OPP–2009–0301	Marianne Mannix, *mannix.marianne@epa.gov*, (703) 347–0275.
Etofenprox, 7407	EPA–HQ–OPP–2007–0804	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Fenpropathrin, 7601	EPA–HQ–OPP–2010–0422	Garland Waleko, *waleko.garland@epa.gov*, (703) 308–8049.
Flumethrin, 7456	EPA–HQ–OPP–2016–0031	Maria Piansay, *piansay.maria@epa.gov*, (703) 308–8063.
Gamma-cyhalothrin, 7437	EPA–HQ–OPP–2010–0479	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Imiprothrin, 7426	EPA–HQ–OPP–2011–0692	Margaret Hathaway, *hathaway.margaret@epa.gov*, (703) 305–5076.
Kresoxim-Methyl, 7026	EPA–HQ–OPP–2012–0861	Bonnie Alder, *adler.bonnie@epa.gov*, (703) 308–8523.
Lambda-cyhalothrin, 7408	EPA–HQ–OPP–2010–0480	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Linuron, 0047	EPA–HQ–OPP–2010–0228	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Metalaxyl and Mefenoxam, 0081	EPA–HQ–OPP–2009–0863	Leigh Rimmer, *rimmer.leigh@epa.gov*, (703) 347–0553.
MGK–264, 2430	EPA–HQ–OPP–2012–0415	Bilin Basu, *basu.bilin@epa.gov*, (703) 347–0455.
Momfluorothrin, 7457	EPA–HQ–OPP–2015–0752	Bilin Basu, *basu.bilin@epa.gov*, (703) 347–0455.
Permethrin, 2510	EPA–HQ–OPP–2011–0039	Brittany Pruitt, *pruitt.brittany@epa.gov*, (703) 347–0289.
Phosmet, 0242	EPA–HQ–OPP–2009–0316	Maria Piansay, *piansay.maria@epa.gov*, (703) 308–8063.
Prallethrin, 7418	EPA–HQ–OPP–2011–1009	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Pyrethrins, 2580	EPA–HQ–OPP–2011–0885	Brian Kettl, *kettl.brian@epa.gov*, (703) 347–0535.
Tau-fluvalinate, 2295	EPA–HQ–OPP–2010–0915	Miguel Zavala, *zavala.miguel@epa.gov*, (703) 347–0504.
Tefluthrin, 7409	EPA–HQ–OPP–2012–0501	Marianne Mannix, *mannix.marianne@epa.gov*, (703) 347–0275.
Tetramethrin, 2660	EPA–HQ–OPP–2011–0907	Nathan Sell, *sell.nathan@epa.gov*, (703) 347–8020.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessment for aliphatic esters, cyclanilide, cymoxanil, d-phenothrin, dimethomorph, fenpropathrin, imiprothrin, kresoxim-methyl, linuron, metalaxyl and mefenoxam, MGK–264, momfluorothrin, phosmet, prallethrin, tau-fluvalinate, tefluthrin, tetramethrin and opens a public comment period on these documents. In addition, this notice announces the availability of EPA's draft ecological risk assessments for the registration review of bifenthrin, cyfluthrins (& beta), cypermethrin (alpha & zeta), cyphenothrin, deltamethrin, esfenvalerate, etofenprox, flumethrin, gamma-cyhalothrin, lambda-cyhalothrin, permethrin, pyrethrins and opens a public comment period on these documents. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to a draft risk assessment. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA will then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessment, if the revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing a proposed registration review decision on the pesticides herein.

1. *Other related information.* Additional information on the registration review status of the chemicals listed in Table 1 of Unit III, as well as information on the Agency's registration review program and on its implementing regulation is available at *http://www.epa.gov/pesticide-reevaluation.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 19, 2016.

Charles Smith,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–28740 Filed 11–28–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Annual Report for Fiscal Year 2016 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d, the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its *Annual Report for Fiscal Year 2016 and Three-Year Plan.* The Board also plans to conduct online surveys to help in assessing the most important priorities for the future and the next steps in its reporting model and performance reporting projects. The annual planning survey is available at *https://tell.gao.gov/fasabplanning.* The financial and performance reporting survey is available at *https://tell.gao.gov/fasabreporting/.* The surveys will open on November 30, 2016, and close on January 30, 2017.

The *Annual Report for Fiscal Year 2016 and Three-Year Plan* is available on the FASAB Web site at *http://www.fasab.gov/our-annual-reports/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: November 22, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016–28615 Filed 11–28–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0713]

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 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 PRA comments should be submitted on or before January 30, 2017. 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 Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions.

Number of Respondents and Responses: 53 respondents; 2,650 responses.

Estimated Time per Response: 5 minutes (0.084 hours).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. 303(n) and 47 CFR Section 73.1225.

Total Annual Burden: 223 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR Section 0.459.

Needs and Uses: The Alternative Broadcast Inspection Program (ABIP) is a series of agreements between the Federal Communications Commission's (FCC) Enforcement Bureau and a private entity, usually a state broadcast association, whereby the private entity agrees to facilitate inspections (and re-inspections, where appropriate) of participating broadcast stations to determine station compliance with FCC regulations. Broadcast stations participate in ABIP on a voluntary basis. The private entities notify their local FCC District Office or Resident Agent Office in writing of those stations that pass the ABIP inspection and have been issued a Certificate of Compliance by the ABIP inspector. The FCC uses this information to determine which broadcast stations have been certified in compliance with FCC Rules and will not be subject to certain random FCC inspections.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–28649 Filed 11–28–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0289]

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 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 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 PRA comments should be submitted on or before January 30, 2017. If you anticipate that you will submit 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: 3060–0289.

Title: Section 76.76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; Section 76.1705, Performance Tests (Channels Delivered); 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 4,450 respondents; 5,955 responses.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Recordkeeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 104,125 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.,* 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.,* employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.,* 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

Note 1 to 47 CFR 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR 76.1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d).

47 CFR 76.1705 requires that the operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

47 CFR 76.1717 states that an operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–28650 Filed 11–28–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0025, –0057, 0140 & –0176)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. On September 22, 2016, (81 FR 65643), the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before December 29, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: FDIC 6200/09.

Affected Public: Insured state nonmember banks wishing to exercise trust powers.

BURDEN ESTIMATE

	Type of burden	Estimated number of respondents	Estimated hours per response	Frequency of response	Total annual estimated burden (hours)
Eligible depository institutions	Reporting	8	8	On Occasion	64
Not-eligible depository institutions	Reporting	4	24	On Occasion	96
Totals		12			160

General Description of Collection: FDIC regulations (12 CFR 333.2) prohibit any insured State nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered a change in the general character of a bank's business if the bank did not exercise those powers previously. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. Applicants use form FDIC 6200/09 to obtain FDIC's consent.

2. *Title:* Certified Statement for Quarterly Deposit Insurance Assessment.

OMB Number: 3064–0057.

Form Number: 6420/07.

Affected Public: FDIC-insured depository institutions.

Estimated Number of Respondents: 6,081.

Frequency of Response: Quarterly.

Estimated Time Burden per Response: 20 minutes.

Total Estimated Annual Burden: 8,108 hours.

General Description of Collection: The FDIC collects deposit insurance assessments on a quarterly basis. Each assessment is based on the institution's quarterly report of condition for the prior calendar quarter. The FDIC collects the quarterly payments by means of direct debits through the Automated Clearing House network. The collection dates for the first period

of any given year (January through June) are June 30 and September 30 of the current year. The collection dates for the second period (July through December) are December 30 of the current year and March 30 of the following year. The information collection consists of recordkeeping associated with reviews by officials of the insured institutions to confirm that the assessment data are accurate and, in cases of inaccuracy, submission of corrected data.

3. *Title:* Insurance Products Consumer Protections.

OMB Number: 3064–0140.

Form Number: None.

Affected Public: Insured State nonmember banks and savings associations that sell insurance products; persons who sell insurance products in or on behalf of insured State nonmember banks and savings associations.

BURDEN ESTIMATE

	Type of burden	Estimated number of respondents	Estimated hours per response	Frequency of response	Total annual estimated burden (hours)
Review disclosure materials	Recordkeeping	2,020	1	On Occasion	2,020
Make disclosures to consumers	Disclosure	2,020	4	On Occasion	8,080
Totals					10,100

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

4. *Title:* Reverse Mortgage Products.

OMB Number: 3064–0176.

Form Number: None.

Affected Public: Insured State nonmember banks and savings associations.

BURDEN ESTIMATE

	Type of burden	Estimated number of respondents	Estimated hours per response	Frequency of response	Total annual estimated burden (hours)
Implementation	Reporting	1	40	Annually	40
Ongoing	Reporting	26	8	Annually	200
Totals					240

General Description of Collection: In August, 2010, the OCC, FDIC, FRB and NCUA issued guidance focusing on the need to provide adequate information to consumers about reverse mortgage products; to provide qualified independent counseling to consumers considering these products; and to avoid potential conflicts of interest. The guidance also addressed related policies, procedures, internal controls, and third party risk management. Prior to the effective date of the final guidance, the Agencies obtained PRA approval from OMB for the information collection requirements contained therein. These information collection requirements included implementation of policies and procedures, training, and program maintenance. The requirements are outlined below:

- Institutions offering reverse mortgages should have written policies and procedures that prohibit the practice of directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf.
- Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage.
- Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.
- Training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 23rd day of November 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–28679 Filed 11–28–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–12]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day Notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the information collection known as the ''Affordable Housing Program,'' which has been assigned control number 2590–0007 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on November 30, 2016.

DATES: Interested persons may submit comments on or before December 29, 2016.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov*. Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Affordable Housing Program, (No. 2016–N–12)' '' by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Affordable Housing Program, (No. 2016–N–12)''.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/2016–N–12, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Deattra D. Perkins, Senior Policy Analyst, Division of Housing Mission & Goals, *Deattra.Perkins@fhfa.gov*, (202) 649–3133; or Sylvia C. Martinez, Manager, Federal Home Loan Bank Housing and Community Investment Programs, Division of Housing Mission & Goals, *Sylvia.Martinez@fhfa.gov*, (202) 649–3301 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office of the Banks that issues and services their debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through eligible non-member ''housing associates.'' [1] Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers.

Section 10(j) of the Bank Act requires FHFA to promulgate regulations under which each of the eleven Banks must establish an Affordable Housing Program (AHP) to provide subsidy to the Bank's member institutions to: (1) Finance homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households); and (2) to finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units will be occupied by and affordable for households earning 50 percent or less of the area median income (very low-income households).[2] Section 10(j) also establishes standards and requirements for providing such subsidized funding to Bank members and requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the eleven Banks of $100 million.[3]

FHFA's AHP regulation, which implements the statutory AHP requirements, is located at 12 CFR part 1291. The regulation requires that each Bank establish and fund an AHP and sets forth the parameters within which the Banks' programs must operate. The regulation permits the Banks a degree of discretion in determining how their individual programs are to be implemented and requires that each Bank adopt an AHP Implementation Plan setting forth the specific requirements for that Bank's program.[4]

Competitive Application Programs

The AHP regulation requires each Bank to establish a competitive application program under which the Bank accepts applications for AHP subsidized advances or direct subsidies (grants) submitted by its members on behalf of non-member entities having a significant connection to the projects for which subsidy is being sought (project sponsors).[5] Each Bank accepts applications for AHP subsidy under its competitive application program during a specified number of funding periods each year, as determined by the Bank.[6] A Bank must determine for each application it receives whether the proposed project meets the AHP regulatory eligibility requirements.[7] The Bank must score each application according to AHP regulatory and Bank-specific scoring guidelines, and approve the highest scoring projects within that funding period for AHP subsidy.[8]

The regulation provides that, prior to each disbursement of AHP subsidy for a project approved under a Bank's competitive application program, the Bank must confirm that the project continues to meet the AHP regulatory

[1] Certain non-member entities are permitted by statute to engage in limited business activities with a Bank. *See* 12 U.S.C. 1430b. FHFA's regulations refer to these entities as ''housing associates.'' *See* 12 CFR part 1264.

[2] *See* 12 U.S.C. 1430(j)(1) and (2).

[3] *See* 12 U.S.C. 1430(j)(5)(C).

[4] *See* 12 CFR 1291.3.

[5] *See* 12 CFR 1291.5. Under the regulation, an AHP project sponsor may be an entity that either: (1) Has an ownership interest in a rental project; (2) is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units; (3) operates a loan pool; or (4) is a revolving loan fund. 12 CFR 1291.1 (definition of ''sponsor'').

[6] *See* 12 CFR 1291.5(b)(1).

[7] *See* 12 CFR 1291.5(c).

[8] *See* 12 CFR 1291.5(d).

eligibility requirements, as well as all commitments made in the approved AHP application.[9] As part of this process, Banks typically require that the member and project sponsor provide documentation demonstrating continuing compliance.

The regulation permits a Bank to approve a modification to the terms of an approved application that would change the score that the application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time. To approve a modification: (i) The project, incorporating the changes, must continue to meet the regulatory eligibility requirements; (ii) the application, as reflective of the changes, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved; and (iii) there must be good cause for the modification, and the analysis and justification for the modification must be documented by the Bank in writing.[10] Banks typically require the member and project sponsor requesting a modification to provide a written analysis and justification as part of their modification request.

The regulation requires generally that a Bank monitor each owner-occupied and rental project receiving AHP subsidy under its competitive application program prior to and after project completion. For initial monitoring, a Bank must determine whether the project is making satisfactory progress towards completion, in compliance with the commitments made in the approved application, Bank policies, and the AHP regulatory requirements. Following project completion, the Bank must determine whether satisfactory progress is being made towards occupancy of the project by eligible households, and whether the project meets the regulatory requirements and the commitments made in the approved application.[11] For long-term monitoring of rental projects, subject to certain exceptions in the AHP regulation, the Bank must determine whether, during the 15-year retention period, the household incomes and rents comply with the income targeting and rent commitments made in the approved application.[12] For both the initial and long-term monitoring, a Bank must review appropriate documentation maintained by the project sponsor.

Homeownership Set-Aside Programs

The AHP regulation also authorizes each Bank, in its discretion, to allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households.[13] Under these homeownership set-aside programs, a Bank may provide to its members AHP direct subsidies, which are to be provided by the members to eligible households as a grant to pay for down payment, closing cost, counseling cost or rehabilitation assistance in connection with the household's purchase of a primary residence or rehabilitation of an owner-occupied residence.[14] Prior to the Bank's disbursement of a direct subsidy under its homeownership set-aside program, the member must provide a certification that the subsidy will be provided in compliance with all applicable regulatory eligibility requirements.[15]

AHP Information Submitted by Banks to FHFA

FHFA's Data Reporting Manual (DRM) requires each Bank to submit to FHFA aggregate AHP information.[16] The DRM requires each Bank to submit to FHFA project-level information regarding its competitive application program and household-level information regarding its homeownership set-aside program semi-annually. The information the Banks are required to submit to FHFA under the DRM is derived from the documentation submitted by Bank members and project sponsors that is described above.

B. Need for and Use of the Information Collection

The Banks use the information collected under part 1291 to determine whether: (1) Projects for which Bank members and project sponsors are seeking subsidies under the Banks' competitive application programs satisfy the applicable statutory and regulatory requirements and score highly enough in comparison with other applications submitted during the same funding period to be approved for AHP subsidies; (2) projects approved under the Banks' competitive application programs continue to meet the applicable requirements and to comply with the commitments made in the approved applications each time subsidy is disbursed; (3) requests for modifications of projects approved under the Banks' competitive application programs meet the regulatory requirements for approval; (4) projects approved under the Banks' competitive application programs are making satisfactory progress towards completion, and following project completion, are making satisfactory progress towards occupancy of the project by eligible households, in compliance with the commitments made in the approved applications, Bank policies, and the regulatory requirements (initial monitoring); (5) during the 15-year retention period, completed rental projects continue to comply with the household income targeting and rent commitments made in the approved applications (long-term monitoring); and (6) applications for direct subsidy under Banks' homeownership set-aside programs were approved, and the direct subsidies disbursed, in accordance with the regulatory requirements.

FHFA uses the information required to be submitted by the Banks under the DRM to verify that the Banks' funding decisions, and the use of the funds awarded, were consistent with statutory and regulatory requirements.

The OMB control number for the information collection is 2590–0007. The current clearance expires on November 30, 2016. The likely respondents are institutions that are Bank members and non-member entities that sponsor an AHP project.

C. Burden Estimate

FHFA has analyzed each of the six facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members and AHP project sponsors annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 115,750. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

I. AHP Competitive Applications

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 1,350 applications for AHP subsidies under the Banks' competitive application programs and that the average preparation time for each application will be 24 hours. The estimate for the total annual hour

[9] *See* 12 CFR 1291.5(g)(3).

[10] *See* 12 CFR 1291.5(f).

[11] *See* 12 CFR 1291.7(a)(1).

[12] *See* 12 CFR 1291.7(a)(4).

[13] *See* 12 CFR 1291.2(b)(2); 1291.6.

[14] *See* 12 CFR 1291.6(c)(4).

[15] *See* 12 CFR 1291.7(b)(2).

[16] The AHP reporting requirements are located in chapter 5 of the DRM, which is available electronically on FHFA's public Web site at *http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks/Documents/FHFB-Resolutions/2006/2006-13-Attachment.pdf.*

burden on members and project sponsors in connection with the preparation and submission of AHP competitive applications is 32,400 hours (1,350 applications × 24 hours).

II. Compliance Submissions for Approved Competitive Application Projects at AHP Subsidy Disbursement

FHFA estimates that Bank members, on behalf of project sponsors, will make an annual average of 700 submissions to the Banks documenting that projects approved under the Banks' competitive application programs continue to comply with the regulatory eligibility requirements and all commitments made in the approved applications at the time each AHP subsidy is disbursed, and that the average preparation time for each submission will be 1 hour. The estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these compliance submissions is 700 hours (700 submissions × 1 hour).

III. Modification Requests for Approved Competitive Application Projects

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 300 requests for modifications to projects that have been approved under the Banks' competitive application programs, and that the average preparation time for each request will be 2.5 hours. The estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these modification requests is 750 hours (300 requests × 2.5 hours).

IV. Initial Monitoring Submissions for Approved Competitive Application Projects

FHFA estimates that project sponsors will make an annual average of 500 submissions of documentation to the Banks for purposes of the Banks' initial monitoring of in-progress and recently completed projects approved under their competitive application programs, and that the average preparation time for each submission will be 5 hours. The estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for initial monitoring of competitive application projects is 2,500 hours (500 submissions × 5 hours).

V. Long-Term Monitoring Submissions for Approved Competitive Application Program Projects

FHFA estimates that project sponsors will make an annual average of 4,800 submissions of documentation to the Banks for purposes of the Banks' long-term monitoring of completed projects approved under their competitive application programs, and that the average preparation time for each submission will be 3 hours. The estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for long-term monitoring of competitive application projects is 14,400 hours (4,800 submissions × 3 hours).

VI. Homeownership Set-Aside Program Applications and Certifications

FHFA estimates that Bank members will submit to the Banks an annual average of 13,000 applications and required certifications for AHP direct subsidies under the Banks' homeownership set-aside programs, and that the average preparation time for those submissions together will be 5 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of homeownership set-aside program applications and certifications is 65,000 hours (13,000 applications/certifications × 5 hours).

D. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice requesting comments regarding this information collection in the **Federal Register** on September 23, 2016.[17] The 60-day comment period closed on September 22, 2016. No comments were received.

In accordance with the requirements of 5 CFR 1320.10(a), FHFA is publishing this second notice to request comments regarding the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology. Comments should be submitted in writing to both OMB and FHFA as instructed above in the COMMENTS section.

[17] *See* 81 FR 65648 (Sept. 23, 2016).

Dated: November 23, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016–28707 Filed 11–28–16; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012443.

Title: Hyundai Glovis/Sallaum Cooperative Working Agreement.

Parties: Hyundai Glovis Co. Ltd. and Sallaum Lines DMCC.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The Agreement authorizes the parties to charter space to/from one another and coordinate the sailings of their ro-ro vessels in the trade from the Atlantic and Gulf Coasts of the United States to ports in West and South Africa. The Parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: November 22, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–28629 Filed 11–28–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *BayCom Corp,* Walnut Creek, California; to become a bank holding company by acquiring 100 percent of Bay Commercial Bank, also of Walnut Creek, California.

Board of Governors of the Federal Reserve System, November 23, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–28694 Filed 11–28–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16ET]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies 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; (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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Comprehensive HIV Prevention and Care for Men Who Have Sex with Men of Color (THRIVE)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 40,000 people in the United States are newly infected with HIV each year. Gay, bisexual, and other men who have sex with men (MSM) remain the population most affected by HIV infection in the United States. Among MSM, those who are black and Hispanic comprise 64% of all new infections. Goals of the National HIV Prevention Strategy include increasing the number of MSM of color living with HIV infection who achieve HIV viral suppression with antiretroviral treatment, and decreasing the number of new HIV infections among MSM of color at risk of acquiring an HIV infection. Achieving these outcomes requires that men utilize a broad variety of HIV prevention and care services.

In 2015, CDC developed a cooperative agreement program to promote use and adoption of Targeted Highly-Effective Interventions to Reverse the HIV Epidemic (THRIVE). Awardees are seven state and local health departments that are developing and implementing demonstration projects to provide comprehensive HIV prevention and care services for MSM of color. Each THRIVE awardee is creating a collaborative with community-based organizations, health care, behavioral health, and social services providers in its jurisdiction to strengthen referrals and coordination of HIV testing, prevention, and treatment services. Overall, approximately 80 partner organizations are participating in THRIVE collaboratives.

Each THRIVE collaborative is required to address a total of 24 HIV prevention and care services, including 13 HIV prevention services for MSM of color at substantial risk for HIV infection and 11 HIV care services for MSM of color living with HIV infection. HIV prevention services include: 1. HIV testing that uses lab-based 4th generation HIV tests; 2. Assessment of indications for pre-exposure prophylaxis (PrEP) and non-occupational post-exposure prophylaxis (nPEP); 3. Provision of PrEP and nPEP; 4. Adherence interventions for PrEP and nPEP; 5. Immediate linkage to care, antiretroviral treatment, and partner services for those diagnosed with acute HIV infection; 6. Expedient linkage to care, antiretroviral treatment, and partner services for those diagnosed with established HIV infection; 7. STD screening and treatment; 8. Partner services for patients with STDs; 9. Behavioral risk-reduction interventions; 10. Screening for behavioral health and social services needs; 11. Linkage to behavioral health and social services; 12. Navigators to assist utilizing HIV prevention and behavioral health and social services; 13. Navigators to assist enrollment in a health plan.

HIV care services include: 1. HIV primary care, including antiretroviral treatment; 2. Retention interventions; 3. Re-engagement interventions; 4. Adherence interventions; 5. STD screening and treatment; 6. Partner services; 7. Behavioral risk reduction interventions; 8. Screening patients for behavioral health and social services needs; 9. Linkage to behavioral health and social services; 10. Navigators to assist linking to care and accessing behavioral health and social services; 11. Navigators to assist enrollment in a health plan.

CDC requests OMB approval to collect the information needed to monitor and assess the demonstration projects. In general, information collection will be conducted in 2 steps: THRIVE

collaborative partners will report information to their respective health department (THRIVE awardee), and THRIVE awardees will provide reports to CDC. The monitoring and evaluation plan is based on semi-annual reports of Monitoring and Evaluation (M&E) Variables, comprised primarily of de-identified or coded client-level data on demographics and services received. The M&E files will be transmitted electronically. Recognizing that THRIVE awardees and partners vary in terms of existing infrastructure, CDC has established guidelines and specifications for M&E content, but is permitting a flexible approach to electronic reporting. A similar approach will be applied to electronic transmission of the annual Funding Allocation Report (FAR). The FAR is only required for THRIVE awardees.

Information collection also includes an Annual Collaborative Process and Outcome Evaluation based on semi-structured interviews and completion of a questionnaire called the Annual Collaborative Assessment Tool. These information collections will allow CDC to assess how successful THRIVE awardees have been in creating, engaging, and sustaining collaborative partnerships and to understand how these partnerships contributed to achieving the goals of the project. Both tools will be submitted to CDC electronically on an annual basis.

CDC will use findings to provide technical assistance to THRIVE awardees and to develop recommendations for the coordination of comprehensive HIV testing, prevention, and treatment services for MSM of color.

OMB approval is requested for three years. Participation is required as a condition of THRIVE funding and there are no costs to respondents other than their time. The total estimated annualized burden hours are 1,543.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
THRIVE Partners	Monitoring and Evaluation Data Elements on HIV Prevention and Care Services.	80	2	9
	Qualitative Interview: Collaborative Process Evaluation	80	1	40/60
	Collaborative Assessment Tool	80	1	20/60
THRIVE Awardees	Monitoring and Evaluation Data Elements on HIV Prevention and Care Services.	7	2	1
	Qualitative Interview: Collaborative Process Evaluation	7	1	40/60
	Collaborative Assessment Tool	7	1	20/60
	Funding Allocation Report	7	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–28588 Filed 11–28–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0214]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies 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; (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; and (e) Assess information collection costs. To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Health Interview Survey (NHIS) (OMB No. 0920–0214, expires 01/31/2019)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect data on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data from 2017 to 2019.

This voluntary and confidential household-based survey collects demographic and health-related information from a nationally representative sample of noninstitutionalized, civilian persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with

health-related administrative and other records. In 2017 the NHIS will collect information from approximately 45,000 households, which contain about 100,000 individuals. Information is collected using computer assisted personal interviews (CAPI).

A core set of data is collected each year that remains largely unchanged, whereas sponsored supplements vary from year to year. The core set includes socio-demographic characteristics, health status, health care services, and health behaviors. For 2017, supplemental questions will be cycled in pertaining to alternative and integrative medicine, cognitive disability, receipt of culturally and linguistically appropriate health care services, epilepsy, and heart disease and stroke. Supplemental topics that continue or are enhanced from 2016 pertain to the Affordable Care Act, chronic pain, diabetes, disability and functioning, family food security, ABCS of heart disease and stroke prevention, hepatitis B/C screening, immunizations, smokeless tobacco and e-cigarettes, vision, and children's mental health. Questions from 2016 on balance, Crohn's disease and colitis, and blood donation have been removed. In addition to these core and supplemental modules, a subsample of NHIS respondents and/or members of commercial survey panels may be identified to participate in short, Web-based methodological and cognitive testing activities that will inform the upcoming 2018 NHIS questionnaire redesign. The aims of these standalone assessments include pilot testing new and/or updated questionnaire items, evaluating the impact of different categorical response option formats on answer choices, and measuring respondent comprehension of health care-related terms and concepts.

In accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, academic, and private researchers to evaluate both general health and specific issues, such as smoking, diabetes, health care coverage, and access to health care. It is a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2020.''

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 49,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Family Member	Family Core	45,000	1	23/60
Sample Adult	Adult Core	36,000	1	15/60
Adult Family Member	Child Core	14,000	1	10/60
Adult Family Member	Supplements	45,000	1	20/60
Adult Family Member	Methodological Projects	15,000	1	20/60
Adult Family Member	Reinterview Survey	5,000	1	5/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–28641 Filed 11–28–16; 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

Title: Center for States Evaluation Ancillary Data Collection.

OMB No.: New Collection.

Description: The Evaluation of the Child Welfare Capacity Building Collaborative, Center for States is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The purpose of this evaluation is to respond to a set of cross-cutting evaluation questions posed by the Children's Bureau. This new information collection is an ancillary part of a larger data collection effort being conducted for the evaluation of the Child Welfare Capacity Building Collaborative. Two groups of instruments for the larger evaluation have already been submitted, and requests for clearance have been submitted to the Office of Management and Budget (see **Federal Register** Volume 80, No. 211, November 2, 2015; **Federal Register** Volume 81, No. 41, March 2, 2016; **Federal Register** Volume 81, No. 111, June 9, 2016; **Federal Register** Volume 81, No. 186, September 26, 2016), with the first group of instruments approved on August 31, 2016. This notice details a group of instruments that are specific only to the Center for States. The instruments focus on (1) evaluating an innovative approach to engaging professionals in networking and professional development through virtual conferences, (2) understanding fidelity to and effectiveness of the Center for States' Capacity Building Model, and (3) capturing consistent information during the updated annual assessment process focused on related contextual issues impacting potential service delivery such as implementation of new legislation.

Respondents: Respondents of these data collection instruments will include child welfare agency staff and stakeholders who directly receive services.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Virtual Conference (VC) Session Surveys	450	6	.08	216
VC Focus Group Guide	30	1	1	30
VC Interview Guide	20	1	.5	10
VC Registration Data	1000	1	.03	30
Tailored Services Practice Model Survey	130	1	.25	32.5
Assessment Observation—group debrief	50	1	.25	12.5
Service Delivery and Tracking and Adjustment Observation—group debrief	45	1	.25	11.3
Assessment and Service Delivery and Tracking and Adjustment State Lead Interviews	20	1	.5	10
Annual Assessment Update (8 systematic questions)	54	1	.08	4.3

Estimated Total Annual Burden Hours: 356.6.

In compliance with the requirements of Section 3506(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, 330 C Street SW., Washington, DC 20201. 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 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. 2016–28678 Filed 11–28–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–4669 and FDA–2015–E–4659]

Determination of Regulatory Review Period for Purposes of Patent Extension; IXINITY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IXINITY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 30, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 30, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2015–E–4669 and FDA–2015–E–4659 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; IXINITY.'' Received comments will be placed in the dockets and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets

Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of the USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product IXINITY (Coagulation Factor IX (recombinant)). IXINITY is indicated for control and prevention of bleeding episodes and for perioperative management, in adults and children ≥12 years of age with hemophilia B. Subsequent to this approval, the USPTO received patent term restoration applications for IXINITY (U.S. Patent Nos. 7,645,602 and 8,603,823) from the University of North Carolina at Chapel Hill, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 10, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of IXINITY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for IXINITY is 2,437 days. Of this time, 1,318 days occurred during the testing phase of the regulatory review period, while 1,119 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 28, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 28, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): April 6, 2012. The applicant claims April 5, 2012, as the date the biologics license application (BLA) for IXINITY (BLA 125426) was initially submitted. However, FDA records indicate that BLA 125426 was submitted on April 6, 2012.

3. *The date the application was approved:* April 29, 2015. FDA has verified the applicant's claim that BLA 125426 was approved on April 29, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,526 days or 505 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28653 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0830]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Abbreviated New Drug Applications and 505(b)(2) Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Abbreviated New Drug Applications and 505(b)(2) Applications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2016, the Agency submitted a proposed collection of information entitled ''Abbreviated New Drug Applications and 505(b)(2) Applications'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0786. The approval expires on November 30, 2019. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28655 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2153]

Mitigating the Risk of Cross-Contamination From Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Mitigating the Risk of Cross-Contamination From Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes.'' Flexible gastrointestinal endoscopes and accessories are class II devices and identified with product codes such as FDF, FDS, and OCX. When using these devices during an entire day of procedures (*e.g.,* colonoscopies), clinicians typically use one irrigation system (*i.e.,* one water bottle, one set of tubing and valves, etc.) without cleaning and sterilizing all the system components between patients. This guidance highlights the cross-contamination risk associated with day-use of irrigation systems used with flexible gastrointestinal endoscopes; clarifies terminology used to describe these devices; and outlines strategies to mitigate the risk of cross-contamination between patients during these procedures.

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: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–D–2153 for ''Mitigating the Risk of Cross-Contamination From Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be

made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

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 ''Mitigating the Risk of Cross-Contamination From Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Shanil Haugen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G104, Silver Spring, MD 20993–0002, 301–796–0301.

SUPPLEMENTARY INFORMATION:

I. Background

Flexible gastrointestinal endoscopes and accessories (including valves and other devices used for irrigation) are class II devices regulated under 21 CFR 876.1500, *Endoscope and accessories.* During a colonoscopy or esophagogastroduodenoscopy (EGD), clinicians often use an irrigation system comprised of a water bottle, tubing, valves, etc., to supply irrigation for the procedure. Clinicians typically do not clean and sterilize all components of the irrigation system after each procedure; *e.g.,* they may use a single water bottle for an entire day of procedures without reprocessing the water bottle between patients. This practice raises the risk of cross-contamination between patients, because the water bottle and associated tubing and connectors can become contaminated with the fluids and materials (*e.g.,* blood, stool) of patients that travel back through the irrigation system channels and tubing during the procedure.

FDA is providing this guidance to highlight the cross-contamination risk posed by specific practices and types of irrigation valves and accessories; clarify terminology used to describe irrigation system components; and outline recommended mitigation strategies (*e.g.,* device design, labeling) meant to reduce the risk of cross-contamination between patients from the day-use of irrigation system tubing, valves, and accessories. FDA announced the availability of the draft guidance in the **Federal Register** of January 20, 2015 (80 FR 2711). Interested persons were invited to comment by April 20, 2015, and the final guidance includes revisions intended to address the comments received.

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 current thinking of FDA on Mitigating the Risk of Cross-Contamination From Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Mitigating the Risk of Cross-Contamination from Valves and Accessories Used for Irrigation Through Flexible Gastrointestinal Endoscopes'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400054 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

Dated: *November 22, 2016.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28604 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0735]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Superimposed Text in Direct-to-Consumer Promotion of Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 29, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW nd title Superimposed Text in Direct-to-Consumer Promotion of Prescription Drugs. Also include the FDA docket

number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Superimposed Text in Direct-to-Consumer Promotion of Prescription Drugs—OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The proposed study seeks to extend previous research on the effects of superimposed text (supers) in advertising to today's modern direct-to-consumer (DTC) pharmaceutical promotion. Although earlier research on the effects of supers in other consumer settings suggests that altering text size can influence consumer comprehension of information, it is unclear if these findings extend to DTC promotion of prescription drugs and are applicable over 20 years later when viewing promotional materials using today's modern technologies (*e.g.,* tablets). Moreover, other factors such as text/background contrast may also influence both the understanding of the superimposed information (Ref. 1) and the effects of text size. The proposed research seeks to update these earlier findings and also to answer new questions concerning presentation of supers.

Part of FDA's public health mission is to ensure the safe use of prescription drugs; therefore it is important that the information provided in DTC promotion is clear and understandable for consumer audiences, avoids use of deceptive or misleading claims, and achieves ''fair balance'' in presentation of benefits and risks. For example, varying presentation formats including type size, bulleting, amount of white space, and use of ''chunking'' or headlines can all influence consumer perceptions of information (Ref. 2). A systematic review of presentation formats in prescription drug labeling found that these ''clear communication'' characteristics positively influenced consumer's comprehension of information and prescription drug behaviors (*i.e.,* adherence) (Ref. 3). In one randomized controlled study, young and older adults were presented with 12 otherwise identical over-the-counter drugs bottled with varied container labels along various dimensions, one of which was text size (7 vs 10 point). While younger participants performed equally well with both font sizes, elderly populations had significantly reduced recall and comprehension when exposed to the smaller text size (Ref. 4). Another study found that both young and older populations preferred the larger text size, and that patients read labels with larger font more rapidly and accurately than labels with smaller font (Ref. 5). Although these studies were specific to prescription drug container labels, it is plausible that the effects of font sizes would be applicable to drug promotion.

Some early research in the late 1980s and 1990s examined the size of text information in advertising topics outside of prescription drugs (Refs. 6, 7, and 8). These studies all generally found that text size was associated with comprehension, such that larger text sizes increased understanding of the material (and, conversely, smaller text sizes interfered with comprehension). For example, Foxman and colleagues (Ref. 6) found that whereas ''small'' text size (<½ inch size) was associated with accurate comprehension for 59% of respondents, ''large'' text size (>½ inch size) was associated with comprehension for 79% of respondents. Studies by other researchers (Refs. 7 and 8) found similar patterns such that increasing the text size of supers generally corresponded with increased comprehension.

We know of no studies that have examined other commonly variable factors, such as text/background contrast, that may interact with text size to influence comprehension. Early research on text readability determined that the contrast between text and background has a consistent but small effect. Specifically, while the contrast of color has a small effect (Ref. 9), the contrast in brightness, or luminance, makes the largest difference (Ref. 10). These studies showed that black text on a white background results in the highest readability (Ref. 11), but that other effects of color contrasts are unclear (Ref .1). Some studies have demonstrated that contrast interacts with text size, such that contrast becomes a more important discriminator as the text size decreases (Ref. 12).

The earlier research on supers is limited in their applicability to today's DTC promotion in several ways. None of these studies specifically focused on prescription drug promotion, but rather explored the effects of superimposed text in a variety of social and consumer advertising contexts. Another limitation is that these earlier studies were conducted with populations (*i.e.,* undergraduate students) that are not representative of today's prescription drug users. It is not clear if the effects of supers would translate to older adult populations, who represent the greatest proportion of prescription drug users (Ref. 13). Perhaps most importantly, it is unknown if the effects of supers would be found today, considering the prevalent use of modern technologies, including large (40+ inches) TV screens and personal tablets. Our proposed study seeks to address these unanswered questions regarding the use of supers in prescription drug promotion.

General Research Questions

1. Does the size of the superimposed text, the contrast behind the superimposed text, and/or the device type influence the noticeability, recall, and perceived importance of the super information?

2. Does the size of the superimposed text, the contrast behind the superimposed text, and/or the device type influence the recall of and attitudes toward the promoted drug?

3. Are there any interaction effects among any combination of independent variables?

Design

To test these research questions, we will conduct one randomized controlled study. We will examine reactions to supers in a fictitious DTC prescription drug promotional video on two types of viewing devices with a general population sample. The study design will be a 3 x 2 x 2 factorial design, where participants are randomly assigned to one of 12 experimental study arms differentiated by:

- Super text size (small, medium, large);
- Device type (television, tablet);
- Super text contrast (high, low).

TABLE 1—DESIGN AND CELL SIZES FOR MAIN STUDY

Device type	TV			Tablet			Total
Super size	Small	Medium	Large	Small	Medium	Large	
Contrast:							
High	106	106	106	106	106	106	636
Low	106	106	106	106	106	106	636
Total	212	212	212	212	212	212	1,272

Note: The sample will be split evenly across three cities (Los Angeles, CA; Cincinnati, OH; and Tampa, FL), with 424 participants per city.

For both the pretest and main study, we will work with two market research firms to recruit adult participants and conduct in-person data collection in three U.S. cities: Los Angeles, CA, Cincinnati, OH, and Tampa, FL. In addition to our aim for regional variation, we selected these three cities with the aim of recruiting a sample that is diverse on gender, race/ethnicity, education, and age characteristics.

Participants from the general population will be invited to a market research facility to watch one video for a fictional prescription drug that treats asthma. In-person administration of study procedures will enable us to control the television and tablet watching experience in terms of size, distance, and other variables. Participants will watch the video twice and then answer questions addressing recall of risks and benefits, perceptions of risks and benefits, and questions regarding the salience of information in text. The questionnaire is available upon request. Participation is estimated to take approximately 20 minutes.

To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance (ANOVA).

Pretesting will take place before the main study to select super sizes for the main study and to evaluate the procedures and measures that will be used. We will exclude individuals who work in healthcare or marketing settings because their knowledge and experiences may not reflect those of the average consumer. We conducted a priori power analyses to determine sample sizes for the pretest and the main study.

In the **Federal Register** of March 9, 2016 (81 FR 12503), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received 10 comments total. Six comments were outside the scope of the proposed research (''Ban DTC''), leaving four substantive comments.

1. Abbvie

a. *Comment:* Mobile users can change font size and viewing size—we should incorporate this into our study.

Response: Although the font size for certain text (such as newspaper articles) or closed captioning text size can be changed on a tablet, supers within a developed video cannot be manipulated. Participants will be allowed to hold the tablet as they normally would, but it is important to establish experimental control over many user settings to avoid threats to internal validity. Thus, font and viewing size will be standardized for this study.

b. *Comment:* Recommend looking at use of TV and mobile devices concurrently, as some people use them this way.

Response: This is a good suggestion for future research, but is out of scope for the current study.

2. Lilly

a. *Comment:* Generally supportive; research objectives and study approach are reasonable.

Response: Thank you.

b. *Comment:* Recommend showing supers in black box at bottom of the screen and not superimposing them over moving, contrasting color field to mimic common practices in television commercial advertising.

Response: Our high contrast condition indeed presents the supers in white font on a black background at the bottom of the screen. Our low contrast condition shows lettering over the moving scenes because not all advertisements show their supers in a black banner.

c. *Comment:* Lilly requests clarity about how the size of text and level of contrast were developed when the agency reports the results of the study.

Response: We used cognitive interviews and will use the pretest to make these determinations. We will be sure to include this information when we report the results of the study.

d. *Comment:* Recommend qualitative pre-test instead of quantitative pretest.

Response: We fulfilled this suggested purpose with a set of nine cognitive interviews that were conducted in April.

e. *Comment:* Request clarity about quota sampling and other techniques we may plan to use to ensure a diverse sample. Also suggest groups of at least 50 in each cell for analysis purposes.

Response: As this study is not intended to be nationally representative, we will not employ strict quota sampling procedures. However, we will work closely with our recruitment firms to monitor recruitment and ensure that our sample is diverse with regard to factors including race, education, age and gender. Further, selection of our three U.S. cities for data collection (Los Angeles, Cincinnati and Tampa) was purposive to help achieve diversity on these factors.

To answer the second part of the comment, we are aware of no statistical or research standard that specifies that groups must contain 50 individuals. However, we conducted power analyses and determined that in order to have enough power for the proposed statistical tests, we will exceed this number per experimental cell.

f. *Comment:* Recommends replacing the pre-test question about the importance of the text information (Question 5) with a question such as ''how noticeable or legible was the text information?''

Response: We agree that the noticeability and legibility of the text information is important, and we have other questions that address this. We are specifically interested in the perceived importance of the text information as a moderator variable.

g. *Comment:* Recommends removing semantic differential questions (Question 9) and essentially any questions that ask about perceptions because it is a pretest.

Response: Our pretest study is not designed to test the main study questionnaire. Rather, the main purposes of the pretest are to (1) test consumer perceptions of superimposed-text size with the aim of choosing perceptibly different levels of size (small, medium, large) for use in the main study; and (2) test our planned

procedures for implementation of the intervention (TV and tablet) and in-person data collection. However, to make the most use of our resources, we also plan to test the properties of certain main study survey items (*e.g.,* means, ranges, etc.) to ensure the utility of the items for use in the main study.

h. *Comment:* Calls out an inconsistency in terms of how many times participants will view the ad.

Response: Thank you for noting that discrepancy. Participants will view the ad once. We have corrected all materials to reflect this change. Lilly recommends showing it twice. We agree that if the goal is to learn about user experience (preferences and such, or trying to improve the presentation) then two or more viewings makes sense. However, our goal is to test differences in cognitive processing based on the varied size/contrast presentations of the supers. Thus, we do not want to artificially enhance the scrutiny participants pay to the ad above and beyond the experimental situation. For example, small supers may interfere with cognitive processing as hypothesized, but this interference may be overcome upon a second viewing. In a real world viewing situation, consumers rarely see an ad two times in a row.

i. *Comment:* Question 12: Attributes are very similar and will be duplicative.

Response: The three survey items for question 12 (attitudes towards the ad) are conceptually similar and will be used as a multi-item scale. Conventionally, three items is the minimum recommended to assess inter-item reliability.

j. *Comment:* Question 12 and 14: Suggest bolding or underlining ''drug'' or ''ad'' in these questions to differentiate them for participants.

Response: We agree and have added language to the survey items to better make this distinction. For items specific to attitudes towards the drug we now begin the item with ''Overall, DRUG X is . . .'' whereas items about the ad begin with ''Overall, the ad was . . .''

k. *Comment:* Would be interesting to include an open-ended question about whether any additional information could have or should have been provided in the ad, such as accessibility to the drug, information about the disease, etc.

Response: These are great ideas and would provide additional information about various communication issues relevant to DTC television promotion. However, we regret that we must make difficult choices about what to include and not include in this study and these issues fall outside the scope of the current research questions.

3. Merck

a. *Comment:* FDA's execution may not yield useful data. For example, we are examining TV and tablet use, but people may be viewing promotion on mobile devices.

Response: We agree that the ways in which people view their media are multiplying and that we have not captured all of them. However, rather than simply study superimposed text on a television screen, we opted to add an examination of viewing on a tablet, which is an increasingly popular option for viewing shows. We regret that we do not have the opportunity to explore viewing on all possible new technologies, but we believe that the current study will offer insights above and beyond the television screen.

b. *Comment:* Prior to the implementation of results from individual studies on the content, format, and presentation of information in DTC advertisements on television, FDA should conduct research on the combination of all of the individual factors.

Response: This comment is outside the scope of the present project. It is not directed at the improvement of the study and does not appear to require the abandonment of the current study.

4. GlaxoSmithKline (GSK)

a. *Comment:* Allowing participants to view the TV at the distance they usually view it and to interact with the tablet the way they ordinarily do would better reflect a real-world experience.

Response: We agree that these details are important to consider when conducting valid research. We must make a decision between the trade-off of experimental control and real-world generalizability. We have attempted to do this by setting up the television and chair in the room at the average distance that people tend to sit from their televisions in their living room and instructing participants to wear glasses or contact lenses if needed. Television viewing is a more fixed experience than more modern technologies. We also agree that allowing individuals to hold the tablet or place it on a table as they normally would is appropriate for both experimental control and ecological generalizability.

b. *Comment:* Including a medium contrast instead of just a high and low contrast may be informative.

Response: We appreciate this comment because we considered it when designing the study. We decided to use only high and low contrast in the study because our main variable of interest in this particular study is the size of the text. Thus, we are expending resources to attempt to determine multiple sizes of text to test in order to get a fuller appreciation of the role of text size in DTC promotion. We have found in past studies that identifying a medium level is difficult (*e.g.,* OMB Control No. 0910–0695) and chose in this study to focus on size rather than contrast. That said, we do feel that contrast is valuable enough to add as a variable of interest, so we are planning to devote two conditions to it.

c. *Comment:* It would be useful if the questionnaire is posted along with the notice on regulations.gov.

Response: We are happy to provide the questionnaire to anyone who requests it.

d. *Comment:* Suggests an FDA-Industry working group might be helpful in the furtherance of this research.

Response: This is an intriguing idea and may have merit after we obtain empirical data that is specifically applicable to DTC promotion. Without this data, it is unclear what this working group would contribute. We will consider this idea in further detail upon interpretation of results.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Pretesting					
Number to complete the screener (assumes 50% eligible).	338	1	338	0.08 (5 minutes)	27

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Number of completes	240	1	240	0.42 (25 minutes)	101
Main Study					
Number to complete the screener (assumes 50% eligibility).	1,785	1	1,785	0.08 (5 minutes)	143
Number of completes	1,272	1	1,272	0.42 (25 minutes)	534
Total hours					805

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Hall R.H. and P. Hanna ''The Impact of Web page Text-background Colour Combinations on Readability, Retention, Aesthetics, and Behavioural Intention.'' *Behavior & Information Technology.* vol. 23 pp. 183–95, 2004.
2. Baur C and C. Prue ''The CDC Clear Communication Index is a Tool to Prepare and Review Health Information.'' *Health Promotion Practice.* vol.15 pp. 629–37, 2014.
3. Shrank W, J. Avorn, C. Rolon, and P.Shekelle ''Effect of Content and Format of Prescription Drug Labels on Readability, Understanding, and Medication Use: A Systematic Review.'' *Annals of Pharmacotherapy.* vol. 41 pp. 783–801, 2007.
4. Wogalter, M.S. and W.J. Vigilante. ''Effects of Label Format on Knowledge Acquisition and Perceived Readability by Younger and Older Adults.'' *Ergonomics.* vol. 46 pp. 327–344, 2003.
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6. Foxman, E.R., D.D. Muehling and P.A. Moore. ''Disclaimer Footnotes in Ads: Discrepancies Between Purpose and Performance.'' *Journal of Public Policy and Marketing.* vol. 7 pp. 127–37, 1988.
7. Murray N.M., L.A. Manrai and A.K. Manrai. ''Public Policy Relating to Consumer Comprehension of Television Commercials: A Review and Some Empirical Results.'' *Journal of Consumer Policy.* vol. 16 pp. 145–170, 1993.
8. Manrai, L.A., A.K. Manrai and N. Murray. ''Comprehension of Info-aid Supers in Television Advertising for Social Ideas: Implications for Public Policy''. *Journal of Business Research.* vol. 30 pp. 75–84, 1994.
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11. Tinker M.A. and D.G. Paterson. ''Studies of Typographical Factors Influencing Speed of Reading. VII. Variations in Color of Print and Background.'' *Journal of Applied Psychology.* vol. 15 pp. 471–9, 1931.
12. Legge G.E., G.S. Rubin and A. Luebner ''Psychophysics of reading. V. The Role of Contrast in Normal Vision.'' *Vision Research* vol. 27 pp. 1165–77, 1987.
13. Kaufman D.W., J.P. Kelly, L. Rosenberg, T.E. Anderson and A.A. Mitchell. ''Recent Patterns of Medication Use in the Ambulatory Adult Population of the United States: The Slone Survey.'' *Journal of the American Medical Association* vol. 287 pp. 337–344, 2002.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28733 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–F–3880]

Novus International, Inc.; Filing of Food Additive Petition (Animal Use); Correction

AGENCY: Food and Drug Administration, HHS

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Novus International, Inc.; Filing of Food Additive Petition (Animal Use)'' that appeared in the **Federal Register** of November 8, 2016 (81 FR 78528). The document announced that Novus International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly (2-vinylpyridine-co-styrene) as a nutrient protectant for methionine hydroxy analog in animal food for beef cattle, dairy cattle, and replacement dairy heifers. Additionally, the petition proposes that the food additive regulations be amended to provide for the safe use of ethyl cellulose as a binder for methionine hydroxy analog to be incorporated into animal food. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115, *lisa.granger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, November 8, 2016, in FR Doc. 2016–26922, on page 78528, the following correction is made: On page 78528, in the first column, ''Docket No. FDA–2014–F–0452'' is corrected to read ''Docket No. FDA–2016–F–3880''.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28656 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0575]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection found in FDA's ''Guidance for Industry: Expedited Programs for Serious Conditions—Drugs and Biologics.''

DATES: Submit either electronic or written comments on the collection of information by January 30, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0575 for ''Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 11601 Landsdown St., 10A–12M, North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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, including each proposed extension of an existing 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.

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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics OMB Control Number 0910–0765—Extension

FDA has established four programs intended to facilitate and expedite development and review of new drugs to address unmet medical needs in the treatment of serious or life-threatening conditions: (1) Fast track designation including rolling review, (2) breakthrough therapy designation, (3) accelerated approval, and (4) priority review designation. In support of these programs, the Agency has developed the guidance document, ''Guidance For Industry: Expedited Programs for Serious Conditions—Drugs and Biologics.'' The guidance outlines the programs' policies and procedures and describes applicable threshold criteria, including when to submit information to FDA. Respondents to the information collection are sponsors of drug and biological products appropriate for these expedited programs.

Priority Review Designation Request. The guidance describes that a sponsor may expressly request priority review of an application. Based on information from FDA's databases and information available to FDA, we estimate that approximately 48 sponsors will prepare and submit approximately 1.7 priority review designation submissions that receive a priority review in accordance with the guidance and that the added burden for each submission will be approximately 30 hours to develop and submit to FDA as part of the application (totaling 2,400 hours).

Breakthrough Therapy Designation Request. The guidance describes the process for sponsors to request breakthrough therapy designation in an application. Based on information from FDA's databases and information available to FDA, we estimate that approximately 87 sponsors will prepare approximately 1.29 breakthrough therapy designation submissions in accordance with the guidance and that the added burden for each submission will be approximately 70 hours to prepare and submit (totaling 7,910 hours).

Accordingly, we estimate the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance on expedited programs	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Priority Review Designation Request	48	1.7	80	30	2,400
Breakthrough Therapy Designation Request	87	1.29	113	70	7,910
Total					10,310

[1] There are no capital costs or operating and maintenance costs associated with the information collection.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR parts 202.1, 314, and 601, and sections 505(a), 506(a)(1), 735, and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), 356(a)(1), 379(g), and 379(h)) have been approved under OMB control numbers 0910–0686, 0910–0001, 0910–0338, 0910–0014, and 0910–0297.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28732 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–E–0622]

Determination of Regulatory Review Period for Purposes of Patent Extension; NUWIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NUWIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 30, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 30, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted,

marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–E–0622 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; NUWIQ.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product NUWIQ (Antihemophilic Factor (Recombinant)). NUWIQ is indicated for adults and children with Hemophilia A for:

• On-demand treatment and control of bleeding episodes;

• perioperative management of bleeding;

• routine prophylaxis to reduce the frequency of bleeding episodes.

Subsequent to this approval, the USPTO received a patent term restoration application for NUWIQ (U.S. Patent No. 7,572,619) from Octapharma AG, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 20, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of NUWIQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NUWIQ is 2,622 days. Of this time, 2,165 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 2, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 2, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): June 5, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for NUWIQ (BLA 125555/0) was initially submitted on June 5, 2014.

3. *The date the application was approved:* September 4, 2015. FDA has verified the applicant's claim that BLA 125555/0 was approved on September 4, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,336 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written

petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28654 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0349]

Providing Postmarketing Periodic Safety Reports in the International Council for Harmonisation E2C(R2) Format (Periodic Benefit-Risk Evaluation Report); Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Providing Postmarketing Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report).'' This guidance is intended to inform applicants of the conditions under which FDA will exercise its waiver authority to permit applicants to submit an International Council for Harmonisation (ICH) (formerly International Conference on Harmonisation) E2C(R2) Periodic Benefit-Risk Evaluation Report (PBRER) in place of the ICH E2C(R1) Periodic Safety Update Report (PSUR), U.S. Periodic adverse drug experience report (PADER), or U.S. Periodic adverse experience report (PAER), to satisfy the periodic safety reporting requirements in FDA regulations. The guidance describes the steps applicants can take to submit the PBRER, and discusses the format, content, submission deadline, and frequency of reporting for the PBRER.

DATES: Submit either electronic or written comments on the guidance at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *https://www.regulations.gov/*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov/* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov/*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0349 for ''Providing Postmarketing Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov/* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov/*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov/* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or 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 requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jean Chung, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4466, Silver Spring, MD 20993–0002, 301–796–2380; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration,10903 New Hampshire Ave., Bldg. 71, Rm. 3128,

Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Providing Postmarketing Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report).'' We are issuing the guidance to describe the conditions under which FDA will exercise its waiver authority to permit the holders of approved new drug applications, abbreviated new drug applications, and biologics license applications (applicants) to use the reporting format of the PBRER to submit periodic safety reports for their marketed products. The harmonized PBRER is intended to promote a consistent approach to periodic postmarketing safety reporting among the ICH regions and to enhance efficiency by reducing the number of reports generated for submissions to the regulatory authorities.

FDA's postmarketing safety reporting regulations require applicants to submit periodic safety reports in the form of a Periodic adverse drug experience report (PADER) (for drugs) or a Periodic adverse experience report (PAER) (for biologics) (21 CFR 314.80(c)(2) and 600.80(c)(2), respectively). FDA has routinely granted waivers under 21 CFR 314.90(b) and 600.90(b) permitting applicants to submit an internationally harmonized Periodic Safety Update Report (PSUR) prepared in accordance with ICH E2C (see 62 FR 27470, May 19, 1997) and 69 FR 5551, February 5, 2004)) instead of a PADER/PAER under conditions stated in the waiver. On November 15, 2012, the ICH Steering Committee signed off on the ICH harmonized guideline ''Periodic Benefit-Risk Evaluation Report (PBRER) E2C(R2)'' and recommended that the PBRER format be adopted by the ICH regulatory bodies of the three regions. Therefore, the new and more comprehensive report format, the PBRER, has superseded the PSUR report format.

This guidance provides information on the steps applicants can take to submit a PBRER to the FDA in place of a PSUR, PADER, or PAER. The guidance discusses: (1) Applicants who have a waiver for their approved product to submit a PSUR instead of a PADER/PAER and (2) applicants who have not obtained a waiver and are currently submitting PADERs/PAERs as required under FDA regulations. Because the PBRER has replaced the PSUR as the ICH E2C harmonized postmarketing safety report format, FDA is permitting applicants with an existing PSUR waiver to substitute the PBRER for the PSUR without submitting a new waiver request. This guidance describes the steps an applicant should take to submit the PBRER instead of the PSUR. For applicants who do not have a PSUR waiver for their approved application but would like to submit the PBRER instead of the PADER/PAER, this guidance provides information on how to submit a waiver request if they wish to do so.

This guidance describes the content, format, and submission deadlines applicants should follow when submitting the PBRER, as well as U.S.-specific appendices that should be submitted with the PBRER. It also explains how applicants can fulfill FDA's annual reporting requirement while submitting a harmonized PBRER that covers a longer reporting interval. In addition, FDA will consider requests to waive the quarterly reporting requirement.

This guidance finalizes the draft guidance for industry entitled ''Providing Postmarket Periodic Safety Reports in the ICH E2C(R2) Format (Periodic Benefit-Risk Evaluation Report),'' which was announced in the **Federal Register** of April 8, 2013 (78 FR 20926). We reviewed the comments received on the draft guidance and revised several sections of the guidance in response to comments and questions on topics such as the submission of the nonexpedited individual case safety reports, waivers of the quarterly reporting requirement, the supplemental information to be provided with the PSUR/PBRER, handling gaps in reporting with changes to the date of the data lock point for the reporting interval, and accepted formats for the periodic safety report. In response to comments, we also clarified the text in the examples that were given in the draft guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on providing postmarketing periodic safety reports in the ICH E2C(R2) PBRER format. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at *https://www.regulations.gov/, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information related to submission of waiver requests under §§ 314.90(a) and 600.90 have been approved under OMB control numbers 0910–0001 and 0910–0308. The guidance also refers to collections of information that have been approved under OMB control number 0910–0771 related to providing waiver-related materials in accordance with the guidance.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28606 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2635]

The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals; Establishing Appropriate Durations of Therapeutic Administration; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for a notice that appeared in the **Federal Register** of September 14, 2016. In that notice, FDA requested comments regarding the establishment of appropriately targeted durations of use of antimicrobial drugs of importance to human medicine (*i.e.,* medically important antimicrobial drugs) when they are administered in the feed or water of food-producing animals for therapeutic purposes. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the request for comments

published September 14, 2016 (81 FR 63187). Submit either electronic or written comments by March 13, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–2635 for ''Establishing Appropriate Durations of Therapeutic Administration.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0817, *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 2016 (81 FR 63187), FDA solicited comments regarding the establishment of appropriate durations of use of antimicrobial drugs of importance to human medicine when administered in the feed or water of food-producing animals for therapeutic purposes with a 90-day comment period.

The Agency has received requests for an extension of the comment period. These requests conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the request for comments.

FDA has considered the requests and is extending the comment period for 90 additional days, until March 13, 2017. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments without significantly delaying FDA's consideration of these important issues.

Dated: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28660 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0067]

Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Establishment of a Public Docket; Request for Comments; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on March 15, 2017, from 7:30 a.m. to 3:45 p.m.

ADDRESSES: Omni Shoreham Hotel, the Ballroom, 2500 Calvert St. NW., Washington, DC 20008. The hotel telephone number is 202–234–0700. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm*.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0067 for ''Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Notice of Meeting.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, 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, *ACPS-CP@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.

SUPPLEMENTARY INFORMATION:

Agenda: The use of model-informed drug development (MIDD) for new and generic drugs has significantly increased over the past several years. The committee will discuss strategies, approaches, and challenges in MIDD with specific focus on two areas. During the morning session, the committee will discuss approaches and evidentiary information needed for applying physiologically-based pharmacokinetic modeling and simulation throughout a drug's lifecycle. During the afternoon session, the committee will discuss mechanistic model-informed safety evaluation with a focus on drug potential for causing arrhythmias. The Comprehensive in Vitro Proarrhythmia Assay will be discussed as an exemplar.

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. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section) on or before March 1, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 9:50 a.m. to 10:20 a.m. and 2:15 p.m. to 2:45 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 21, 2017. 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 22, 2017.

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 disabilities. If you require accommodations due to a disability, please contact Jennifer

Shepherd 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: November 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28605 Filed 11–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that a meeting of the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will take place. This meeting will be open to the public.

DATES: Thursday, January 12, 2017, from 12:00 p.m. to 5:00 p.m. ET, and Friday, January 13, 2017, from 9:00 a.m. to 5:00 p.m. ET.

ADDRESSES: Individuals may attend this meeting in person and/or by utilizing virtual technology. Information for in-person attendance will be posted on the CFSAC Web site, *http://www.hhs.gov/ash/advisory-committees/cfsac/meetings/index.html.* Registration is required for in-person attendance. Information on the procedure to follow for registration will be included on the CFSAC Web site. For individuals wishing to attend the meeting virtually, a webinar will be offered. Information about accessing the webinar will be included on the CFSAC Web site.

FOR FURTHER INFORMATION CONTACT: Gustavo Seinos, MPH, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, 200 Independence Avenue SW., Room 712E, Washington, DC 20201. Please direct all inquiries to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: The CFSAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The purpose of the CFSAC is to provide advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health on topics related to myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS). The issues can include factors affecting access and care for persons with ME/CFS; the science and definition of ME/CFS; and broader public health, clinical, research, and educational issues related to ME/CFS.

The agenda for this meeting, call-in information, and location will be posted on the CFSAC Web site *http://www.hhs.gov/ash/advisory-committees/cfsac/meetings/index.html.*

Thirty minutes will be allotted for public comment via telephone or in person on each day of the meeting. Each individual will have three minutes to present their comments. Priority will be given to individuals who have not provided public comment within the previous year. We are unable to place international calls for public comments. Individuals are required to register to participate in the public comment sessions. To request a time slot for public comment, please send an email to *cfsac@hhs.gov* by January 5, 2017. The email should contain the speaker's name and the telephone number at which the speaker can be reached for the public comment session.

Individuals who would like for their testimony to be provided to the Committee members should submit a copy of the testimony prior to the meeting. It is preferred, but not required, that the submitted testimony be prepared in digital format and typed using a 12-pitch font. Copies of the written comment must not exceed 5 single-space pages, and it is preferred, but not required that the document be prepared in the MS Word format. Please note that PDF files, charts, and photographs cannot be accepted. Materials submitted should not include sensitive personal information, such as Social Security number, birthdate, driver's license number, passport number, financial account number, or credit or debit card number. If you wish to remain anonymous, then document must specify this.

The Committee welcomes input on any topic related to ME/CFS.

Gustavo Seinos,

Designated Federal Officer, CDR, USPHS.

[FR Doc. 2016–28723 Filed 11–28–16; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing and Collaboration

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Genetically Engineered Mouse-Derived Allograft for Use in Preclinical Studies of Metastatic Melanoma Therapies.

Keywords: Melanoma, GDA, Allograft, Genetically Engineered Mouse, immunological response.

Description of Technology: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development.

Before testing drugs in humans, drug developers are required to demonstrate a reasonable expectation of safety and efficacy by performing so-called pre-clinical studies. A key element of such trials is the use of animal models,

typically mice or rats that are selected for demonstrating hallmarks of a given disease. For cancer research, while many mouse models exist to simulate the response of the cancer to a particular drug, all of the current models have some limitations in their ability to fully predict the concomitant physiological or immunological response that might result when the drug progresses to clinical trials. This is problematic both in models in which the cancer spontaneously develops in the animal as well as models in which cancerous cells or tumors, *i.e.,* allografts (derived from cells of the same organism) or xenografts (derived from cells of different organism, usually humans), are transplanted into an otherwise cancer-free animal.

To address these issues, researchers at NCI developed a means of more closely simulating in mouse models both melanoma cancer itself and the resulting physiological and immunological response by creating a genetically engineered mice (GEM)-derived allograft (GDA). This allograft both resembles human-like melanoma and has features that will stimulate a normal immunological response in the mouse. Thus, when transplanted into a host, the resulting tumor-containing mouse may be used to test conventional cancer therapies (*e.g.,* chemotherapy and radiotherapy), targeted drugs (*e.g.,* kinase inhibitors), and immunotherapies with an expectation that the response in the mouse will more closely mimic the types of responses expected in humans if the therapy progresses to clinical trials. Further this melanoma-based GDA approach may represent a new standard for building or improving preclinical models of other types of cancer.

Potential Commercial Applications:

- This is a novel mouse allograft model that provides a preclinical model of human-like advanced-stage melanoma.
- This allograft model may be useful for preclinical testing of conventional therapies, targeted therapies, and immunotherapies.

Value Proposition:

- Hgf-tg;Cdk4R24C C57BL/6 mouse-derived melanoma allograft with humanized pathogenetics allows adoption of clinically relevant procedures and endpoints, facilitating clinical translation.
- Features a constitutively activated MET/MAPK pathway and disrupted CDKN2A pathway.
- Expresses typical diagnostic markers of human melanoma such as DCT and TRP1.
- Exhibits progression patterns relevant to human disease.

Development Stage: Basic (Target ID).

Inventor(s): Chi-Ping Day, Glenn T. Merlino, Zoe Weaver Ohler, Rajaa El Meskini, Terry A. Van Dyke (all of NCI), and Thomas Tüting (University Hospital Bonn).

Intellectual Property: HHS Reference Number E–291–2015/0. This is a Research Tool. Following the policy of the National Institutes of Health, patent protection will not be sought.

Publications:

1. Day CP, *et al.* ''Glowing head'' mice: A genetic tool enabling reliable preclinical image-based evaluation of cancers in immunocompetent allografts. PLoS One 2014; 9(11):e109956. [PMID 25369133]
2. Day CP, *et al.* Preclinical mouse cancer models: A maze of opportunities and challenges. Cell. 2015;163(1):39–53. [PMID 26406370]

Contact Information: Inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: November 22, 2016.

John D. Hewes,

Technology Transfer and Patenting Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–28624 Filed 11–28–16; 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; PA–16–194: Mentored Quantitative Research Development Award.

Date: December 12, 2016.

Time: 4:00 p.m. to 5:00 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: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Novel Strategies for Targeting HIV–CNS Reservoirs without Reactivation.

Date: December 13, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, 301–827–7480.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: November 22, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28623 Filed 11–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Center for Advancing Translational Sciences.

The meetings will be open to the public as indicated below, 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.

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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cures Acceleration Network Review Board.

Date: January 12, 2017.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: January 12, 2017.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28625 Filed 11–28–16; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, December 14, 2016, 8:00 a.m. to December 15, 2016, 6:00 p.m., Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on November 21, 2016, 81 FR 83253.

This meeting notice is amended to change the start date of the meeting from December 14, 2016 to December 9, 2016. The meeting is closed to the public.

Dated: November 22, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28643 Filed 11–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development and Commercialization of Dopamine D3 Receptor Selective Antagonists/Partial Agonists for the Treatment of Opioid Use Disorder, Schizophrenia Bipolar Disorder and Tetrahydrocannabinol Dependence

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse, National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to Braeburn Pharmaceuticals, Inc. (''Braeburn'') located in Princeton, New Jersey to practice the inventions embodied in the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center on or before December 14, 2016 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Martha Lubet, Ph.D., Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702 Telephone: (240)–276–5530; Facsimile: (240)–276–5504; Email: *lubetm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: United States Provisional Patent Application No. 62/307600, filed March 14, 2016, entitled ''Dopamine D3 Receptor Selective Antagonists/Partial Agonists; Methods of Making and Use Thereof'' [HHS Reference No. E–053–2016]; and U.S. 8,748,608, Australian 2007354861, and Canadian 2690789 (which claim priority to PCT/US2007/71412 filed June 15, 2007) entitled ''4-phenylpiperazine derivatives with functionalized linkers as dopamine D3 selective ligands and methods of use'' [HHS Reference No. E–128–2006] (and U.S. and foreign patent applications or patents claiming priority to the aforementioned applications).

With respect to persons who have an obligation to assign their right, title and interest to the Government of the United States of America, the patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective Exclusive Patent License territory may be worldwide for the treatment opioid use disorder schizophrenia, bipolar disorder and tetrahydrocannabinol dependence, as set forth in the Licensed Patent Rights.

The present invention describes Dopamine D3 receptor ligands and methods of using the ligands to treat substance use disorders, schizophrenia, bipolar disorder and other mental disorders.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective Exclusive Patent License will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the National Institute on Drug Abuse receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: November 23, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–28698 Filed 11–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Fellowship Review.

Date: March 28, 2017.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Conference Room 508, 5635 Fishers Lane, Rockville, MD 20892.

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: November 21, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28626 Filed 11–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Uniform Application for the Community Mental Health Services Block Grant and Substance Abuse and Prevention Treatment Block Grant FY 2016–2017 Application Guidance and Instructions (OMB No. 0930–0168)—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an approval from the Office of Management and Budget (OMB) for an amendment to the FY 2016–2017 Uniform Application, Section III. Behavioral Health Assessment and Plan, C. Environmental Factors and Plan. The intent of this amendment is to gather information regarding the states' and jurisdictions' plans to implement elements of a syringe services program at 1 or more community-based organizations that receive amounts from the grant to provide substance use disorder treatment and recovery services to persons who inject drugs. In response to the emergence of prescription drug and heroin overdoses and associated deaths in many states and jurisdictions, SAMHSA issued guidance on April 2, 2014, to the states and jurisdictions regarding the use of SABG funds for prevention education and training regarding overdoses and the purchase of naloxone (Narcan®) and related materials to assemble overdose prevention kits.

Respondents are the 50 states and the jurisdictions (District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, and the Red Lake Band of Chippewa Indians of Minnesota).

The following reporting burden is based on estimates developed considering the State substance abuse and mental health authorities responsible for these activities and represents the average total hours to assemble, format, and produce the requested information.

Respondents	Number of respondents	Response per respondent	Total responses	Total burden
States and Jurisdictions	60	1	60	40 hours per State (1,500 hours).

Link for the application, Guidance, and Amendment: *http://www.samhsa.gov/grants/block-grants/*.

Written comments and recommendations concerning the proposed information collection should be sent by December 29, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory

Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–28665 Filed 11–28–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0801]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0086

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0086, Great Lakes Pilotage; without change. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0801] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0801], and must be received by January 30, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary: The Office of Great Lakes Pilotage is seeking an extension of OMB's current approval for Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulates. This extension would require continued submission of data to an electronic collection system. This system is identified as the Great Lakes Electronic Pilot Management System which will eventually replace the manual paper submissions currently used to collect data on bridge hours, vessel delay, vessel detention, vessel cancellation, vessel movage, pilot travel, revenues, pilot availability, and related data. This extension ensures the required data is available in a timely manner and allows immediate accessibility to data crucial from both an operational and rate-making standpoint.

Need: To comply with the statutory and regulatory requirements respecting the rate-making and oversight functions imposed upon the agency.

Forms: CG–4509, Application for Registration as United States Registered Pilot.

Respondents: The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage and members of the public applying to become Great Lakes Registered Pilots.

Frequency: Daily, weekly, monthly, quarterly, semi-annually, annually, on occasion, frequency is dictated by marine traffic levels and association staffing.

Hour Burden Estimate: The estimated annual burden remains at 19 hours a year.

Authority: The Paperwork Reduction Act Of 1995; 44 U.S.C. Chapter 35, As Amended.

Dated: November 22, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28716 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0600]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0087

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information without change: 1625–0087; U.S. Coast Guard International Ice Patrol (IIP) Customer Survey. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0600] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0600], and must be received by January 30, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: U.S. Coast Guard International Ice Patrol (IIP) Customer Survey.

OMB Control Number: 1625–0087.

Summary: This information collection provides feedback on the processes of delivery and products distributed to the mariner by the International Ice Patrol.

Need: In accordance with Executive Order 12862, the U.S. Coast Guard is directed to conduct surveys (both qualitative and quantitative) to determine the kind and quality of services our customers want and expect, as well as their satisfaction with USCG's existing services. This survey will be limited to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated.

Forms: CG–16700, North American Ice Service (NAIS) Customer Survey.

Respondents: Owners and operators of vessels transiting the North Atlantic.

Frequency: Annually.

Hour Burden Estimate: The estimated annual burden remains 120 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28721 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0769]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0028

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0028, Course Approval and Records for Merchant Mariner Training Schools. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens

commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before December 29, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0769] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* You may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–0769], and must be received by December 29, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0028.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (81 FR 62162, September 8, 2016) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Course Approval and Records for Merchant Mariner Training Schools.

OMB Control Number: 1625–0028.

Summary: The information is needed to ensure that merchant marine Training Schools meet minimal statutory requirements. The information is used to approve the curriculum, facility and faculty for these schools.

Need: Section 7315 of 46 U.S.C. authorizes an applicant for a license or document to substitute the completion of an approved course for a portion of the required sea service. Section 10.402 of 46 CFR contains the Coast Guard regulations for course approval.

Forms: N/A.

Respondents: Merchant marine training schools.

Frequency: Five years for reporting and one year for recordkeeping.

Hour Burden Estimate: The estimated burden has increased from 128,139 hours to 139,807 hours a year primarily due to an increase in the number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 23, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28722 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0770]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0079

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0079, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before December 29, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0770] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–0770], and must be received by December 29, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0079.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (81 FR 62163, September 8, 2016) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention.

OMB Control Number: 1625–0079.

Summary: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Need: Chapter 71 of 46 U.S.C. authorizes the Coast Guard to issue regulations related to licensing of merchant mariners. These regulations are contained in 46 CFR chapter I, subchapter B.

Forms: N/A.

Respondents: Owners and operators of vessels, training institutions, and mariners.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 31,730 hours to 29,366 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 23, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28720 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0713]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625—NEW

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following new collection of information: 1625–NEW, State Registration Data. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0713] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for

further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0713], and must be received by January 30, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this Notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

The Coast Guard published a 60-day notice (79 FR 60483, October 7, 2014) required by 44 U.S.C. 3506(c)(2). That Notice elicited five public comment submissions.

Comment (1): A requestor asks the Coast Guard to consider mandating to states that personal watercraft (PWC) data collection is separately maintained. This will ensure accuracy in the entirety of boat classification data collection and significantly aid PWC manufacturers in market assessment.

Answer: The Coast Guard is maintaining the personal watercraft category in our proposed data collection (see 33 CFR174.19(a)(11)); we proposed to collect statistics on personal watercraft by length category.

Comment (2) is: A commenter stated that the Coast Guard's tabulation of State numbered vessels as a result of this Information Collection Request (ICR) cannot be used to measure risk as stated in the supplemental Paperwork Reduction Act submission that accompanies this ICR, especially since there are numerous recreational boating accidents and fatalities that occur in vessels not required to be numbered and not reflected in this collection of information.

Answer: Information in the proposed collection will be used to measure risk; Registration data frequently serves as the denominator of fatality rates (usually expressed in number of deaths per 100,000 registered vessels). The existence of registration data allows the Coast Guard to normalize data and provide meaningful statistics and recommendations for the National Recreational Boating Safety (RBS) Program. The revised collection proposed to break down registration by motorization so that an additional measure, motorized vessel fatality rate, could be used (number of deaths on motorized vessels per 100,000 motorized registered vessels). This measure would provide a much sounder denominator since all States do not collect registration data on non-motorized vessels.

Comment (3) is: A commenter noted that in accordance with 33 CFR 174.123, each State that has an approved numbering system must prepare and submit Coast Guard form CGHQ–3923, Report of Certificates of Number Issued to Boats, to the Coast Guard. Although OMB No. 1625—NEW reflects the revised vessel type terminology resulting from the Coast Guard's 2012 issuance of the Final Rule on Changes to Standard Numbering System, Vessel Identification System, and Boating Accident Report Database (Docket No. USCG–2003–14963), it does not accurately reflect the CFR's terminology in its title or instructions (*i.e.,* all references to the approved numbering system, state numbered boats and certificates of number have been replaced with registrations and registered).

Answer: This is true. The proposed form focuses on registered vessels, which allows the Coast Guard to examine a larger scope of vessels that fall under the National Recreational Boating Safety Program. The Coast Guard will consider changes to the form title in 33 CFR 174.123 to more accurately reflect the data collection under this Information Collection Request.

Comment (4) is: A commenter noted that OMB No. 1625—NEW is dated June 2014, inferring that is already in use (or may be required for use). Because States are currently in various stages of implementation of the Final Rule (with final implementation required by January 1, 2017), States cannot be compelled to begin using OMB No. 1625—NEW prior to January 1, 2017. Any required deviation from the use of CGHQ–3923 prior to January 1, 2017 will result in additional (and in some cases, significant) burden and cost to the States.

Answer: The form is not in use. The June 2014 date was filled in as a placeholder. The form was drafted and sent for comment early so that the public could comment on the proposed content, and the States could prepare for changes after the data collection is finalized. The form will not be required for use prior to January 1, 2017.

Comment (5) is: At this time, the state of Ohio is still in the process of transitioning to the new requirements

cited in 33 CFR 174.19 (which we are required to implement by January 1, 2017). That being the case, what are the Coast Guard's intentions with regard to the version of the reporting form we will need to use to make our annual reporting in 2015 and beyond? Will we have the option to use the ''older'' version of the reporting form until such time that we have transitioned to the new requirements? And, if required to use the new form prior to that transition, how will the Coast Guard view any incomplete data that might not be able to be generated in the new format prior to completion of the transition?

Answer: The form will not be required for use prior to January 1, 2017.

Comment (6) is: Knowing that hull type, and more importantly engine drive information can be important details in better identifying and understanding the boating demographics within a state, what is the rationale for omitting this information in this revised collection form?

Answer: The Coast Guard has not used the hull material or engine information collected in prior registration collections. Because we have not used the data, we removed it from the form so as to reduce the burden of data reporting on the States.

Comment (7) is: Do the estimates of the form completion burden account for any initial burden in transitioning to this revised reporting scheme? What is the basis for estimates of burden in items 12 and 13 of the Supporting Statement for the collection?

Answer: No. The burden estimate took into account the collection of information, which is based on the number of respondents, frequency of form submission and an estimate of the time taken to fill out the form.

Comment (8) is: Is there any relationship between this revision and anticipated efforts to bring CFR into agreement with the Uniform Certificate of Titling Act for Vessels (UCOTA–V)?

Answer: There is not a relationship between this revision and the UCOTA–V efforts.

Comment (9) is: Under Puerto Rico law, a Ship or vessel means any system of transportation on water that has a motor installed, including, but without been limited to jet skis, motorized rafts, power sailboats, motor boats, or powered driven boats of any sort, including homemade vessels powered by motor, but excluding hydroplanes. A watercraft means a mode of transportation which does not have a motor installed, such as rowboats, canoes, kayaks, sailboats with or without oars, water skis, surfboards with or without sail, rafts, inflatable systems, and any device that moves on the surface of the water without being propelled by a motor, although it could be fit for installation or adaptation of some type of motor. Therefore, the proposed change creates an overburden of conflicting definitions or wording to deal with in this case. Also, the removal of the proposed definitions leaves the accident investigation protocol without proper wording to aid in the determination of felonies, infractions, or misdemeanors committed.

Answer: This comment is outside the scope of this Notice requesting comments on this information collection. Please adhere to the definitions in 33 CFR 173.3 for use in this information collection.

Comment (10) is: SS173.57: Same comment as in the previous paragraph. Mainly, when evaluating marine events involving either vessels, watercrafts, or both. It may also affect the terms and conditions of the memorandum of Agreement between the Government of the Commonwealth of Puerto Rico and the USCG under 14 U.S.C. SS2,89,141; 46 CFR SS13109 and 33 CFR SS100.01 as to comply with 46 U.S.C. 13103(c)(2) on the matter of marine events and boat accident reports procedures.

Answer: This collection of information does not relate to marine events or boat accident report procedures. Therefore, this comment is outside the scope of this Notice requesting comments on the collection.

Comment (11) is: The definitions in 33 CFR 181.3 do not include the manufacturing of handmade vessels and is inconsistent with SS181.23(b). It should include person engaged in the manufacture of a boat for his or her own use (operation) and not for sale.

Answer: This collection of information is for all registered vessels. If a homemade vessel is registered, it should be included in the statistics.

Comment (12) is: If a state has already transitioned—or will soon transition—its numbering system and the content of the certificates of number over to the requirements cited in 33 CFR 174.19 (*i.e.,* before the Jan. 1, 2017 implementation deadline), what version of the form is it suppose to use? If, as a result of the ICR, the OMB formally approves the collection and issues an OMB Control Number to this revised form 3923 before the Jan. 1, 2017 deadline for states to implement the new requirements, will a state that does not make the transition until the deadline be able to submit its data on the ''old'' version of the form?

Answer: The proposed form would not be required for use until January 1, 2017. States would be asked to submit information on the historic form. If a State has already transitioned to the new terms ahead of the January 1, 2017 deadline, the Coast Guard will accept registration data on either form.

Comment (13) is: If there are variations in the version of the forms employed by the states and submitted to the Coast Guard, how will the Coast Guard reconcile those differences in the computation and report-out of registration data?

Answer: The Coast Guard will merge datasets if both the historic and proposed forms are used.

In addition to the above comments submitted to the docket, the following comments and questions were received by Coast Guard program staff members:

Comment (14) is: Is this just the periodic request to approve the continuation of the collection of registration data?

Answer: Yes.

Comment (15) is: Has the Notice been issued primarily (at this time) as part of the process to get OMB to issue a control number?

Answer: Yes.

Comment (16) is: Is this in preparation for collection of registration data under the ''new'' vessel terms authorized by the Final Rule on State Numbering System (SNS), Vessel Identification System (VIS), and Boating Accident Report Database (BARD) (eff. Jan 2017)?

Answer: Yes. This form makes use of the ''primary operation'' and ''vessel type'' in 33 Code of Federal Regulation 174.19.

Comment (17) is: Is there a revised collection form that will accompany it?

Answer: Yes. There is a revised collection form that is greatly simplified. The proposed revision provides instructions, a breakdown of recreational vessel types by motorization and length category, a breakdown of commercial vessel types, and an administration section.

Comment (18) is: Will there be any other supporting documentation posted to *regulations.gov* for this Notice?

Answer: Yes. Additional files were posted on October 17, 2014. These include the proposed registration form and supporting statement.

The Coast Guard is publishing an additional 60-day Notice for public commenting due to the time that has elapsed since the initial 60-day Notice has published.

Information Collection Request

Title: State Registration Data.

OMB Control Number: 1625—NEW.

Summary: This Notice provides information on the collection of registration data from the State reporting authorities.

Need: Title 46 U.S.C. 12302 and 33 CFR 174.123 authorizes the collection of this information.

Forms: CG–3923, State Registration Data.

Respondents: 56 State reporting authorities respond.

Frequency: Annually.

Hour Burden Estimate: This is a new information collection request. The estimated burden is 42 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28717 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0915]

Information Collection Request[s] to Office of Management and Budget; OMB Control Number: 1625–0093

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0093, Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0915] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King, Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0915], and must be received by January 30, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual.

OMB Control Number: 1625–0093.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port that an operator intends to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An Operations Manual (OM) is also required for this type of facility. The OM establishes procedures to follow when conducting transfers and in the event of a spill.

Need: Under 33 U.S.C. 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil and hazardous substances from facilities and to contain such discharges. The Letter of Intent regulation is contained in 33 CFR 154.110 and the OM regulations are contained in 33 CFR part 154 subpart B.

Forms: N/A.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 45,749 hours to 21,803 hours a year due to a reduction in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 23, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28715 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0896]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0084

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0084, Audit Reports under the International Safety Management Code. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0896] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0896], and must be received by January 30, 2017.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Audit Reports under the International Safety Management Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to the International Convention for the Safety of Life at Sea (SOLAS 74/78), engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: Title 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. Title 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Forms: N/A.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 17,660 hours to 10,221 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2016.

Thomas P. Michelli,

Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–28719 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Customs Brokers User Fee Payment for 2017

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual user fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 3, 2017.

DATES: Payment of the 2017 Customs Broker User Fee is due by February 3, 2017.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Broker Management Branch, Office of Trade, (202) 863–6601.

SUPPLEMENTARY INFORMATION: Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee of $138 for each customs broker

district and national permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, ''Geographic Boundaries of Customs Brokerage, Cartage and Lighterage Districts,'' published in the **Federal Register** on March 15, 2000 (65 FR 14011), and corrected, with minor changes, on March 23, 2000 (65 FR 15686) and on April 6, 2000 (65 FR 18151).

As required by 19 CFR 111.96, CBP must provide notice in the **Federal Register** no later than 60 days before the date that the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2017, the due date for payment of the user fee is February 3, 2017. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on the last business day of January of each year.

Dated: November 23, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–28692 Filed 11–28–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0031]

Agency Information Collection Activities: Foreign Assembler's Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Assembler's Declaration (with Endorsement by Importer). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 29, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email (*CBP_PRA@cbp.dhs.gov*). Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 62517) on September 9, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1651–0031.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(c) and (d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov Web site at: *http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents/Record-keepers: 2,730.

Estimated Time per Response/Recordkeeping: 55 minutes.

Estimated Number of Responses/Recordkeeping per Respondent: 128.

Estimated Total Annual Burden Hours: 320,087.

Dated: November 23, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–28697 Filed 11–28–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0006]

Agency Information Collection Activities: Application and Approval To Manipulate, Examine, Sample or Transfer Goods

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application and Approval to Manipulate, Examine, Sample or Transfer Goods (Form 3499). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 29, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email (*CBP_PRA@cbp.dhs.gov*). Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 62519) on September 9, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application and Approval to Manipulate, Examine, Sample or Transfer Goods.

OMB Number: 1651–0006.

Form Number: Form 3499.

Abstract: CBP Form 3499, ''*Application and Approval to Manipulate, Examine, Sample or Transfer Goods,*'' is used as an application to perform various operations on merchandise located at a CBP approved bonded facility. This form is filed by importers, consignees, transferees, or owners of merchandise, and is subject to approval by the port director. The data requested on this form identifies the merchandise for which action is being sought and specifies what operation is to be performed. This form may also be approved as a blanket application to manipulate goods for a period of up to one year for a continuous or repetitive manipulation. CBP Form 3499 is provided for by 19 CFR 19.8 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3499.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Responses: 151,140.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Dated: November 23, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–28696 Filed 11–28–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

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: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 Insurance and 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: November 16, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and 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–1640).	City of Peoria (15–09–3165P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Aug. 26, 2016	040050
Maricopa (FEMA Docket No.: B–1622).	Town of Carefree (15–09–2627P).	The Honorable Les Peterson, Mayor, Town of Carefree, 8 Sundial Circle, Carefree, AZ 85377.	Town Council Chambers, 100 Easy Street, Carefree, AZ 85377.	Jun. 16, 2016	040126
Mohave (FEMA Docket No.: B–1640).	City of Lake Havasu (15–09–0823P).	The Honorable Mark S. Nexsen, Mayor, City of Lake Havasu, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	Sep. 1, 2016	040116
Mohave (FEMA Docket No.: B–1640).	Unincorporated areas of Mohave County (15–09–0823P).	The Honorable Jean Bishop, Chair, Board of Supervisors, Mohave County, 700 West Beale Street, Kingman, AZ 86402.	Mohave County Development Services, Flood Control District, 3250 East Kino Avenue, Kingman, AZ 86409.	Sep. 1, 2016	040058
Mohave (FEMA Docket No.: B–1622).	Unincorporated areas of Mohave County (15–09–3028P).	The Honorable Jean Bishop, Chair, Board of Supervisors, Mohave County, 700 West Beale Street, Kingman, AZ 86402.	County Administration Building, 700 West Beale Street, Kingman, AZ 86402.	Jun. 20, 2016	040058
Pima (FEMA Docket No.: B–1608).	City of Tucson (15–09–2298P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street 10th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue 9th Floor, Tucson, AZ 85701.	Jun. 13, 2016	040076
Pima (FEMA Docket No.: B–1622).	City of Tucson (15–09–2996P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street 10th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue 9th Floor, Tucson, AZ 85701.	Jul. 26, 2016	040076
Pima (FEMA Docket No.: B–1622).	City of Tucson (16–09–0139P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street 10th Floor, Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue 1st Floor, Tucson, AZ 85701.	Aug. 8, 2016	040076
Pima (FEMA Docket No.: B–1622).	Unincorporated areas of Pima County (15–09–2996P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue 9th Floor, Tucson, AZ 85701.	Jul. 26, 2016	040073
Pima (FEMA Docket No.: B–1622).	Unincorporated areas of Pima County (15–09–3190P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue 9th Floor, Tucson, AZ 85701.	Jun. 28, 2016	040073
Pinal (FEMA Docket No.: B–1622).	Town of Florence (15–09–2494X).	The Honorable Tom J. Rankin, Mayor, Town of Florence, 775 North Main Street, Florence, AZ 85132.	Department of Public Works, 425 East Ruggles Street, Florence, AZ 85132.	Jul. 1, 2016	040084
Pinal (FEMA Docket No.: B–1622).	Unincorporated areas of Pinal County (15–09–2494X).	The Honorable Cheryl Chase, Chair, Board of Supervisors, Pinal County, 135 North Pinal Street, Florence, AZ 85132.	Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85132.	Jul. 1, 2016	040077
California:					
Alameda (FEMA Docket No.: B–1622).	City of Fremont (15–09–3135P).	The Honorable Bill Harrison, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	City Hall, 3300 Capitol Avenue, Fremont, CA 94538.	Jul. 12, 2016	065028

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Orange (FEMA Docket No.: B–1640).	City of Irvine (16–09–0513P).	The Honorable Steven S. Choi, Ph.D., Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	Sep. 6, 2016	060222
Orange (FEMA Docket No.: B–1640).	City of Lake Forest (16–09–0513P).	The Honorable Andrew Hamilton, Mayor, City of Lake Forest, 25550 Commercentre Drive, Suite 100, Lake Forest, CA 92630.	City Hall, 25550 Commercentre Drive, Suite 100, Lake Forest, CA 92630.	Sep. 6, 2016	060759
Orange (FEMA Docket No.: B–1622).	City of San Clemente (16–09–0544P).	The Honorable Bob Baker, Mayor, City of San Clemente, 100 Avenida Presidio, San Clemente, CA 92672.	City Hall, 100 Avenida Presidio, San Clemente, CA 92672.	Jun. 27, 2016	060230
Ventura (FEMA Docket No.: B–1622).	City of Simi Valley (15–09–3074P).	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Jul. 1, 2016	060421
Nevada:					
Clark (FEMA Docket No.: B–1622).	Unincorporated areas of Clark County (16–09–0518P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Jun. 20, 2016	320003

[FR Doc. 2016–28567 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0025; OMB No. 1660–0026]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Administrative Plan for the Hazard Mitigation Grant Program

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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the State Administrative Plan for the procedural guide that details how the State will administer the Hazard Mitigation Grant Program.

DATES: Comments must be submitted on or before January 30, 2017.

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–2016–0025. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

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: Nicole LaRosa, Grants Policy Branch, Mitigation Division, at (202) 646–3906. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA regulations in 44 CFR 206.437 require development and update of the State Administrative Plan by State Grantees as a condition of receiving Hazard Mitigation Grant Program (HMGP) funding under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, 42 U.S.C. 5170c. Grantees can be any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or an Indian tribal government that chooses to act as a grantee. Section 404 mandates FEMA approval of the State Administrative Plan before awarding any project grant assistance to a community or State applicant.

Collection of Information

Title: State Administrative Plan for the Hazard Mitigation Grant Program

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0026.

FEMA Forms: None.

Abstract: The State Administrative Plan is a procedural guide that details how the State will administer the HMGP. The State must have a current administrative plan approved by the appropriate FEMA Regional Administrator before receiving HMGP funds. The administrative plan may take any form including a chapter within a comprehensive State mitigation program strategy.

Affected Public: State, local or Tribal government.

Number of Respondents: 32.

Number of Responses: 64.

Estimated Total Annual Burden Hours: 512.

Estimated Cost: $21,847.04.

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: November 22, 2016.

Richard W. Mattison

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–28612 Filed 11–28–16; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5976–N–02]

Housing Opportunity Through Modernization Act of 2016: Solicitation of Comments on Implementation of Public Housing Income Limit

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice for comment.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). One of the statutory amendments made by HOTMA adds an income limit to the Public Housing program. This notice informs the public of how HUD proposes to implement that income limit and solicits comments on that methodology.

DATES: *Comment Due Date:* December 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice for comment. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please send an email to *HOTMAquestions@hud.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, President Obama signed HOTMA into law (Pub. L. 114–201, 130 Stat. 782). Section 103 places an income limitation on a public housing tenancy for families. The law requires that after a family's income has exceeded 120 percent of the area median income (AMI) for the most recent two consecutive annual reviews, a PHA must terminate the family's tenancy within 6 months of the second income determination or charge the family a monthly rent equal to the greater of (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit including amounts from the operating and capital fund. A PHA must notify a family of the potential changes to monthly rent after one year of the family's income exceeding 120 percent of the AMI. Pursuant to 24 CFR 960.503, this section does not apply to small PHAs that are renting to families with income over 120 percent of AMI. Each PHA must submit a report annually to HUD about the number of families residing in public housing with incomes exceeding the applicable income limitation and the number of families on the waiting lists for admission to public housing projects. Such reports must be publically available.

Section 103 of HOTMA sets a maximum amount of annual adjusted income for a family to occupy a public housing unit at 120 percent of the AMI. However, HUD has the ability to adjust that 120 percent if the Secretary determines that it is necessary to do so because of prevailing levels of construction costs, or unusually high or low family incomes, vacancy rates, or rental costs.

On February 3, 2016, at 81 FR 5677, HUD published an advanced notice of proposed rulemaking (ANPR) soliciting public input on various questions dealing with the possibility of imposing an income limit for public housing.[1] HUD received 135 comments on the ANPR, from individuals, PHAs, tenant advocacy groups, and PHA associations. Some opposed an income limit, stating that public housing residents benefit from being in mixed-income developments, and that imposing an income limit that would apply to everyone would be unfair in areas with high rents or low demand for the public housing units. Other commenters supported an income limit, stating that encouraging families to move out when their income reached a certain level would allow families in the most need to move into decent and affordable units.

There were also many suggestions on how to impose an income limit. Commenters asked for a maximum income based on the AMI or a percentage over the income limits for admission into public housing. Some commenters said that incorporating local housing conditions into the income limit would be too complicated, while others stated that not taking local conditions into account would be unfair to families. Some commenters stated that families reaching an income limit should be given a few months to find new housing, while others suggested families be allowed a period of several years. Some commenters noted that having an income limit did allow families with a greater need to move in, while others wrote that forcing the highest-income tenants out would increase the amount of subsidy a PHA would pay and decrease their ability to provide affordable housing.

Some of these comments and questions were made moot by the passage of HOTMA. However, as HUD exercises the discretion available in the new statute, HUD has taken into account the views and suggestions already submitted for the ANPR in its initial methodology factoring in local housing costs. HUD is providing for 30 days of public comment.

[1] The comment period was originally 30 days, but the comment period was re-opened for an additional 30 days at 81 FR 12613.

II. Proposed Method of Determining Income Limit

HUD calculates low-, very low-, and extremely low-income limits for the public housing program. These income limits are used for assessing program eligibility. Very low-income (VLI) limits are preliminarily calculated as 50 percent of the estimated area median family income. VLI limits include several adjustments to align the income limits with program requirements including:

1. High Housing Cost Adjustment. The 4-Person VLI limit is increased if it would otherwise be less than the amount at which 35 percent of it equals 85 percent of the annualized two-bedroom Section 8 40th percentile FMR (this adjusts income limits upward for areas where rental housing costs are unusually high in relation to median income).

2. Low Housing Cost Adjustment. If the 4-person VLI limit exceeds 80 percent of the U.S. median family income, and the two bedroom 40th percentile FMR is affordable (less than or equal to 30 percent of the preliminary VLI limit), the VLI limit will be reduced to the greater of 80 percent of U.S. median family income or the amount at which 30 percent of it equals the two-bedroom 40th percentile FMR. This adjusts income limits downward for areas of unusually high median family incomes.

3. State Non-Metro Median Family Income Adjustment. The 4-person VLI limit is also adjusted if it would otherwise be lower than 50 percent of the State non-metro median family income; and

4. Ceilings and Floors for Changes. In lieu of holding income limits harmless, HUD does not allow income limits to decrease or increase more than 5 percent. The VLI limits are calculated for every FMR area, so there may be subareas for metropolitan statistical areas (MSAs).

For the purpose of determining the income limit, including any adjustments, HUD will use the VLI limit as the basis of the 120 percent income limit (by multiplying the VLI limit by a factor of 2.4). For those areas without an adjustment, the result is an income limit of 120 percent of AMI. For areas where HUD has made an adjustment to the VLI limit, the result of the multiplier will be higher or lower than 120 percent of AMI, depending on the adjustments made. For example, for the Los Angeles MSA, HUD's income limit methodology results in a high housing cost adjustment, therefore, the income limit for families residing in this area is 167 percent of AMI, due to the higher housing costs in this MSA.

HUD's income limits were developed by HUD's Office of Policy Development and Research, and are updated annually. Information about HUD's income limits and HUD's methodology for adjusting income limits as part of the income limit calculation can be found at: *https://www.huduser.gov//datasets/il/il16/index_il2016.html*.

III. Request for Comments

HUD is seeking comments on the methodology described above. Specifically, HUD seeks comments on the following questions:

1. Does the methodology adequately consider local housing costs and make appropriate adjustments for higher housing costs?

2. What other factors should HUD consider when determining whether to make adjustments to the income limit? Please provide specific examples of circumstances that are not captured in HUD's proposed methodology.

IV. Environmental Impact Certification

This notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: November 17, 2016.

Jemine Bryon,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 2016–28593 Filed 11–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–C–34]

60-Day Notice of Proposed Information Collection: FHA Single Family Model Mortgage Documents

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction; notice.

SUMMARY: This notice corrects the document HUD published at 81 FR 84608, November 23, 2016. HUD is amending both paragraphs on page 4. HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 30, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, 451 7th Street SW., Washington, DC 20410; email *KevinL.Stevens@hud.gov;* or telephone 202–402–2673. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

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: FHA Single Family Model Mortgage Documents.

OMB Approval Number: 2502—New.

Type of Request: Approval of a new collection of information.

Form Number: N/A.

Description of the need for the information and proposed use:

This notice advises of FHA's review and proposed revisions to the Single Family Model Forward Mortgage document. Similar to FHA's review of its multifamily mortgage transactional documents, healthcare facilities transactional documents, and hospital transactional documents, FHA is reviewing its Single Family mortgage transactional documents to determine where revisions and updates may be needed. This notice presents one document that FHA has identified for

review and update, and additional documents may be the subject of future notices for comment.

Proposed Changes to the Model Forward Mortgage Document

The following describes the changes proposed to be made to the Single Family Model Forward Mortgage document, which can be found, with the proposed changes to the document's terms highlighted, at HUD's Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/SFH_policy_drafts.*

Forward Mortgage

The majority of the proposed changes are conforming or technical in nature (*e.g.,* correction of internal references and typographical errors). Included in this category is the proposed change to Section 19. As provided in FHA's Instructions for Model Mortgages (located at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/model_documents*) the FHA Model Forward Mortgage document is based largely on the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association (the ''Government Sponsored Enterprises'' or ''GSEs'') security instrument covenants, with certain FHA-specific revisions. When incorporating the GSE covenants into the Model Forward Mortgage document, the second paragraph of Section 19 was unintentionally omitted, but reference to that paragraph was retained in the section heading, resulting in an apparent internal discrepancy in the Model Forward Mortgage. Because the omission of this paragraph was not identified as an FHA-Specific Modification (as that term is used in the Instructions for Model Mortgages), mortgagees have been free to adopt the analogous GSE covenant provision to resolve this discrepancy. Therefore, although the proposed change to Section 19 appear substantive, it should bring the Model Forward Mortgage into closer conformity with current FHA-insured mortgages and industry standard.

In addition to these technical changes, FHA is proposing one set of substantive changes to the Model Forward Mortgage, reflected in the judicial and non-judicial versions of Section 22 (hereinafter ''Sections 22'') and Section 20. Prior to the September, 2014 publication of the current Model Forward Mortgage, the former Model Forward Mortgage contained the following provision: ''[i]n many circumstances regulations issued by the Secretary will limit Lender rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.'' (hereinafter ''Paragraph 9(d)''). Because Paragraph 9(d) is not necessarily entailed by FHA regulatory or statutory authority, its omission was a natural consequence of the adoption of the GSE security instrument covenants. Mortgagees are obliged to fulfill their contractual and regulatory obligations to the Department, including commencing foreclosure upon satisfaction of certain regulatory preconditions, regardless of whether certain of those obligations are recited in or incorporated by reference into a separate mortgage contract with a borrower.

Since publication of the current FHA Model Forward Mortgage, however, FHA has been informed that Paragraph 9(d) has been viewed by borrowers as providing certain defenses to foreclosure actions, and has, on occasion, been successfully used to assert such defenses under circumstances where mortgagees allegedly fail to satisfy certain preconditions to foreclosure reflected in the Department's regulations. The Department's regulations form the contract of mortgage insurance between FHA and the mortgagee, which has always been regarded as separate and distinct from the private mortgage contract between mortgagee and borrower. However, the Department also acknowledges the incidental benefits of incentivizing mortgagee compliance with FHA requirements by incorporation of a similar, separate contractual right in the private mortgage contract between the mortgagee and borrower. The reintroduction of language in the proposed change to Sections 22 similar to that contained in the previous Paragraph 9(d) may serve to again further this goal.

The Department is also proposing a revision to Section 20, which generally provides that the borrower is not a third-party beneficiary to the contract of mortgage insurance between the lender and FHA. Legally, FHA borrowers have never been deemed third-party beneficiaries of the mortgage insurance contract between FHA and the mortgagee, and therefore, have had no authority to enforce any provisions thereof. However, as reflected in the proposed changes to Sections 22, the borrower and lender will enjoy contractual rights and obligations under the private mortgage contract that happen to mirror elements of the mortgage insurance contract because they both separately rely on HUD's regulations. By asserting rights under the private mortgage contract, even those that incorporate elements of the regulations forming the mortgage insurance contract, borrowers would not be enforcing the contract of mortgage insurance and FHA regulations as such, but rather enforcing the private contractual terms incorporated into the mortgage contract that mirror those regulations.

While aiming to clearly delineate the lines between the private mortgage contract and the contract of mortgage insurance through the language contained in Section 20, the Department does not wish to cause any confusion concerning the borrower's ability to enforce his or her rights that have been granted through the incorporation of certain regulatory provisions. Therefore, for clarity, the Department is proposing a revision to Section 20 that eliminates any confusion regarding the borrower's ability to assert rights under the private mortgage contract with the mortgagee as provided in the proposed changes to Section 22. The proposed revision to Section 20 does not jeopardize the settled fact that borrowers are not third-party beneficiaries of the mortgage insurance contract and do not have the authority to enforce any provisions thereof. This is a consequence of well-established legal principals governing contractual relationships and privity, which will remain unchanged notwithstanding the proposed revision. HUD expects, therefore, that the proposed change renders Section 20 more apparently consistent with the proposed changes to Sections 22, but does not intend to create third-party rights under the mortgage insurance contract.

The following information regarding respondents and number of responses is based on information related to the actual legal mortgage document, not the model mortgage document.

Affected Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,535.

Estimated Number of Responses: 164,447.

Frequency of Response: On Occasion.

Average Hours per Response: .05.

Total Estimated Burdens: 822 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the

proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 23, 2016.

Janet M. Golrick,

Associate General Deputy Assistant, Secretary for Housing Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–28756 Filed 11–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–SA–2016–N206; FF01SNPLC0–FXSC141001NPLC0–178]

Proposed Information Collection; Pacific Northwest Coastal Landscape Conservation Design Social Network Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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: To ensure that we are able to consider your comments on this IC, we must receive them by January 30, 2017.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *tina_campbell@fws.gov* (email). Please include ''1018–PNW'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Tina Campbell at *tina_campbell@fws.gov* (email) or 703–358–2676 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

We will collect information on organizations' approaches to landscape scale conservation; their capacities, priorities, strategies, and approaches to collaboration; what other organizations they have sought advice from, collaborated with, or would like to collaborate with; their organizational type, size, and location; and where in the U.S. Pacific Northwest region they operate. The survey results will provide information about where, how, and with whom organizations working on coastal ecosystem issues focus their efforts, and will be used to facilitate opportunities for improved coordination and collaboration to enhance the collective impact of organizations working to protect and restore the health of U.S. Pacific Northwest coastal watersheds, estuaries, and associated ecosystems, and the communities that value, use, and depend on these resources.

II. Data

OMB Control Number: 1018–None.

Title: Pacific Northwest Coastal Landscape Conservation Design Social Network Survey.

Service Form Number: None.

Type of Request: New.

Description of Respondents: Businesses, nongovernmental organizations, local and county governments, State and tribal governments, Federal agencies, and educational institutions.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (minutes)	Total annual burden hours
Survey	200	180	30	90
Totals	200	180	30	90

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Dated: November 22, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–28648 Filed 11–28–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N151; FF06E11000–167–FXES11120600000]

Endangered and Threatened Wildlife and Plants; Permits; Draft Supplement to Environmental Impact Statement and Amendment to Habitat Conservation Plan for Forest Management in Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: We, the U.S. Fish and Wildlife Service, intend to prepare a draft Supplemental Environmental Impact Statement (DSEIS) under the National Environmental Policy Act to consider potential impacts on the human environment from proposed amendments to an incidental take permit and associated habitat conservation plan. Under the Endangered Species Act, we issued the original permit to the Montana Department of Natural Resources and Conservation (DNRC) in December 2011, authorizing take of the grizzly bear, Canada lynx, bull trout, and two other fish species incidental to the DNRC's forest management activities. The purpose of this notice is to describe the proposed action and advise other Federal and State agencies, potentially affected tribes, and the public of our intent to prepare a DSEIS. The DNRC intends to jointly prepare the DSEIS to comply with its responsibilities under the Montana Environmental Policy Act. We are not soliciting comments at this time. The public will have opportunity to comment on the published DSEIS when we announce its availability in the **Federal Register** and local and regional news sources.

FOR FURTHER INFORMATION CONTACT: Ben Conard, Assistant Field Supervisor, at (406) 758–6882 or *Ben_Conard@fws.gov;* or Gary Frank, Deputy Chief, Forest Management Bureau, Montana DNRC, at (406) 542–4328 or *gfrank@mt.gov*.

Individuals who are hearing or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance. Information on this proposed action is also available at the DNRC's Web site, at *http://dnrc.mt.gov/divisions/trust/forest-management/hcp*.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service (Service) issued an original permit to the Montana Department of Natural Resources and Conservation (DNRC) in December 2011, authorizing take of the grizzly bear, Canada lynx, bull trout, and two other fish species incidental to their forest management activities. The DNRC now is proposing to amend the HCP to incorporate terms of a settlement agreement and is requesting that we amend the permit to cover additional lands.

We intend to prepare a DSEIS under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) to consider potential impacts on the human environment from the proposed amendment to a habitat conservation plan (HCP) and associated incidental take permit issued under section 10(A)(1)(B) of the ESA. The DNRC intends to jointly prepare the DSEIS to comply with the Montana Environmental Policy Act, Mont. Code Ann. 75–1–101–75–1–324 and the DNRC implementing regulations, Administrative Rules of Montana 36.2.501–36.2.611. The DNRC is requesting that the permit be amended to authorize potential take from forest management activities on an additional 81,416 acres. The DNRC is also proposing to amend the HCP to incorporate the terms of a settlement agreement to add conservation measures and remove others that are no longer relevant.

The DNRC is preparing an amendment to the HCP detailing how the proposed action would be adopted to comply with the HCP's required measures to avoid, minimize, and mitigate the effects of incidental take of the covered species to the maximum extent practicable. We provide this notice to (1) describe the proposed action and (2) advise other Federal and State agencies, potentially affected tribes, and the public of our intent to prepare a DSEIS. In the DSEIS, we will analyze potential effects to the covered species and other factors of the human environment from the proposed action and alternatives to the action.

Background

In April 2009, the DNRC applied for a permit for take incidental to forest management activities for the grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), bull trout (*Salvelinus confluentus*), westslope cutthroat trout (*Oncorhynchus clarkii lewisi*), and interior redband trout (*Oncorhynchus mykiss gairdneri*). The grizzly bear, lynx, and bull trout are federally listed, while the westslope and redband trout species are not. Before deciding whether to issue the permit, we analyzed the potential effects of implementation of the HCP and alternatives in a draft EIS (DEIS). In an announcement in the **Federal Register** on June 26, 2009 (74 FR 30617), we provided the DEIS and DNRC's permit application package, which included the draft HCP, for public review for a total of 105 days. After considering the public comments, the Service finalized the EIS and issued the permit to DNRC on December 14, 2011.

The permit area covers approximately 548,500 acres of forested State trust lands in western Montana. However, because DNRC expected to transfer, exchange, or add lands for their forest management activities in the future, the HCP addressed the process and contingencies for doing so. Thus, the Service considered in the EIS the potential effects of amending the HCP and incidental take permit to cover such actions.

In April 2013, two environmental organizations challenged the issuance of the permit in a Federal District Court in Montana. The Court ruled in the Service's favor on all but one count. DNRC and the plaintiffs subsequently entered a settlement agreement for that count in September 2015. The future addition of lands to the HCP and permit were not part of the complaint or the settlement agreement.

Proposed Action

The Service plans to prepare a supplement to the EIS to assess the effects of the proposed amendment to the HCP and permit and incorporation of the terms of the settlement agreement.

The terms of the settlement agreement focus primarily on adjusting management of DNRC's Class A lands under the Stillwater Block Transportation Plan in the HCP, which entailed a strategy of a cycle of 4 years of active forest management followed by 8 years of rest. The settlement agreement identifies seven distinct grizzly bear security zones totaling 22,007 acres. These security zones include the entirety of the original 19,400 acres of Class A lands in the Stillwater Block in the HCP, but also add 2,300 acres in a new area in Coal Creek State Forest. The amended HCP would replace the 4-year active/8-year rest management cycle on Stillwater Block Lands with specific measures for restricting forest management activities to the denning season in these grizzly bear security zones. All motorized activities below 6,300 feet in elevation within the grizzly security zones would be allowed during the grizzly denning season and prohibited all year round above that elevation. The same seasonal and elevation restrictions would apply

to commercial forest management activities within the grizzly security zones. The current HCP prohibits new permanent road construction on the original 19,400 acres of Class A lands. This measure would remain essentially the same under an amendment, but would be specifically applied to the seven grizzly security zones, including the additional 2,300 acres in the Coal Creek State Forest. Several other measures in the HCP for Class A lands would remain the same but be extended to the grizzly security zones with amendments. Other amendments would specifically spell out measures that DNRC had committed to implement in the original HCP but were previously incorporated by reference from DNRC's Forest Management Administrative Rules of Montana.

Since we issued the permit, DNRC has acquired an appreciable amount of forested lands within the original HCP area, and they are now requesting to amend the HCP and permit to cover an additional 81,416 acres. DNRC proposes to implement the HCP's existing conservation commitments on the additional lands. The six acquisition areas and their acreages are the Swan, which contains 16,446 acres; Chamberlain, which contains 14,537 acres; Potomac, which contains 32,266 acres; Lolo Land Exchange, which contains 11,066 acres; Upper Blackfoot, which contains 5,458 acres; and Southern Bitterroot, which contains 1,643 acres. The HCP would be amended to reflect inclusion of (1) the Swan acquisition lands in the Swan Transportation Plan, (2) the Swan acquisition area in the Swan Lynx Management Area (LMA), (3) a portion of the Chamberlain acquisition area in the Garnet LMA, and (4) increasing the acres of lynx critical habitat addressed in the HCP.

The original HCP requires the DNRC to complete corrective actions at sites identified with high risk of sediment delivery in bull trout watersheds in the HCP area by 2027. As directed by the settlement agreement, the HCP would be amended to prioritize and complete such corrective actions in federally designated bull trout critical habitat by 2024.

Lastly, over the past 5 years of HCP implementation, the Service and DNRC identified some commitment and procedural clarifications that would be incorporated into the HCP. These amendments would serve to help DNRC understand how to implement certain measures and would not entail any changes to the nature of the measures or how they affect the covered species.

Statutory Requirements

Section 9 of the ESA (16 U.S.C. 1538) and implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit the taking of animal species listed as endangered or threatened. The term ''take'' is defined under the ESA (16 U.S.C. 1532(19)) to mean ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' ''Harm'' is defined by the Service to include significant habitat modification or degradation where it actually kills or injures listed species by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). ''Harass'' is defined by the Service as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits to non-Federal landowners for the incidental take of endangered and threatened species. Such take must be incidental to otherwise lawful activities and not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and the impacts of the take on the listed species must be minimized and mitigated by the permittee to the maximum extent practicable. An applicant for an incidental take permit must prepare an HCP describing the impacts that will likely result from such taking, the conservation program for minimizing and mitigating those take impacts, the funding available to implement the conservation program, the alternatives considered by the applicant to avoid such taking, and the reason(s) such alternatives are not being implemented.

NEPA requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. The Service determined that the final DNRC HCP EIS (September 17, 2010) requires a supplement since the changes in the proposed action may materially or substantially affect the analysis of impacts (40 CFR 1502.9 and 516 DM 4.5).

Public Comments

The DSEIS will be developed using the same process as the original DNRC HCP EIS. We are not soliciting comments at this time. The public will have opportunity to comment on the published DSEIS, which will be announced in the **Federal Register** and local and regional news sources. For general inquiries or questions about the DSEIS process, see **FOR FURTHER INFORMATION CONTACT**.

Authority

The environmental review of this proposed action will be conducted in accordance with the requirements of NEPA, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Interior NEPA regulations (43 CFR part 46), other applicable Federal laws and regulations, and policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 to notify the public of the Service's intent to prepare a DSEIS.

Michael Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2016–28736 Filed 11–28–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Redding Rancheria Fee-to-Trust and Casino Project, Shasta County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, intends to gather information necessary for preparing an environmental impact statement (EIS) in connection with the Redding Rancheria's (Tribe) application requesting that the United States acquire approximately 232 acres of land in trust in Shasta County, California, for the construction and operation of a casino resort.

DATES: To ensure consideration during the development of the EIS, written comments on the scope of the EIS should be sent as soon as possible and no later than December 29, 2016. The date of the public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspapers (Redding Record Searchlight and Sacramento Bee) and online at *www.reddingeis.com.*

ADDRESSES: You may mail or hand-deliver written comments to Ms. Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and ''NOI Comments, Redding Rancheria Project'' on the first page of your written comments. You may also submit comments through email to John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, at *john.rydzik@bia.gov.* If emailing comments, please use ''NOI Comments, Redding Rancheria Project'' as the subject of your email.

The location of the public scoping meeting will be announced at least 15 days in advance through a notice to be published in the local newspaper (Redding Record Searchlight and Sacramento Bee) and online at *www.reddingeis.com.*

FOR FURTHER INFORMATION CONTACT: Mr. John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W–2820, Sacramento, California 95825; telephone: (916) 978–6051; email: *john.rydzik@bia.gov.* Information is also available online at *www.reddingeis.com.*

SUPPLEMENTARY INFORMATION: The Tribe submitted an application to the Department of the Interior (Department) requesting the placement of approximately 232 acres of fee land in trust by the United States upon which the Tribe would construct a casino resort. The facility would include an approximately 140,000 square foot casino, an approximately 250-room hotel, an event/convention center, a retail center, and associated parking and infrastructure. The new facility would replace the Tribe's existing casino, and the exisiting casino buildings would be converted to a different use. Accordingly, the proposed action for the Department is the acquisition requested by the Tribe. The proposed fee-to-trust property is located in an unincorporated part of Shasta County, California, approximately 1.6 miles northeast of the existing Redding Rancheria, and about two miles southeast of downtown Redding. The proposed trust property includes seven parcels, bound by Bechelli Lane on the north, private properties to the south, the Sacramento River on the west, and Interstate 5 on the east. The Shasta County Assessor's parcel numbers (APNs) for the property are 055–010–011, 055–010–012, 055–010–014, 055–010–015, 055–050–001, 055–020–004 and 055–020–005. The purpose of the proposed action is to improve the economic status of the Tribal government so it can better provide housing, health care, education, cultural programs, and other services to its members.

The proposed action encompasses the various Federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Tribe's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals, and will also evaluate a range of reasonable alternatives. Possible alternatives currently under consideration are a reduced-intensity casino alternative, an alternate-use (non-casino) alternative, and one or more off-site alternatives. The range of issues and alternatives may be expanded based on comments received during the scoping process.

Areas of environmental concern identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping meeting. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1501.7 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior National Environmental Policy Act Regulations (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 18, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–28757 Filed 11–28–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Pokagon Band of Potawatomi Indians, Michigan and Indiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the liquor control code of the Pokagon Band of Potawatomi Indians, Michigan and Indiana (the Band). The liquor control code regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Indiana.

DATES: This code will only become effective if and when the Band's pending trust applications for land in Indiana are approved and the transfer to trust status is complete.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca J. Smith, Tribal Relations Specialist, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telephone: (615) 564–6711, Fax: (615) 564–6701; or the Eastern Regional Office, Bureau of Indian Affairs, Telephone: (615) 564–6500.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control codes for the purpose of regulating liquor transactions in Indian country. The Tribal Council of the Pokagon Band of Potawatomi Indians, Michigan and Indiana duly adopted the Pokagon Band Liquor Control Code (Indiana) on November 2, 2015, and subsequently amended it by resolution on July 26, 2016.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Pokagon Band of Potawatomi Indians, Michigan and Indiana Tribal Council duly adopted by Resolution the Pokagon Band of Potawatomi Indians, Michigan and Indiana, Liquor Control Code (Indiana), enacted November 2, 2015 by Res. No. 15–11–02–05 and amended July 26, 2016 by Res. No. 16–07–26–13 to clarify language in section 7 and subsection 8(f) and to correct organizational errors.

Dated: November 18, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

Pokagon Band of Potawatomi Indians, Michigan and Indiana Liquor Control Code (Indiana)

Section 1 Legislative Findings.

The Pokagon Band Tribal Council hereby finds as follows:

(a) The importations, distribution, manufacture, and Sale of Alcoholic Liquor for commercial purposes on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with an act duly adopted by the tribe having jurisdiction over such area of Indian country.

Section 2 Declaration of Policy.

(a) The Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and Sale of Alcoholic Liquor for commercial purposes on the Tribe's Reservation, and to promote temperance in the use and consumption of Alcoholic Liquor by establishing and enforcing Tribal regulation over such activities on the Reservation.

(b) The importation, distribution, manufacture, and Sale of Alcoholic Liquor for commercial purposes on the Reservation shall be lawful, provided that such activity is conducted by the Tribe or by an authorized Tribal Enterprise, and is in conformity with this Code. Such conditions are necessary to increase the Tribe's ability to control and regulate the distribution, Sale, and possession of Alcoholic Liquor, while at the same time provide an important and necessary source of revenue for continued operation of the Tribal government and delivery of Tribal governmental services.

Section 3 Authority. The Council has authority to adopt this Liquor Control Code (''Code'') pursuant to the authority and powers vested in it by Article IX, subsections 2(a), 2(e), 2(i), and 2(j), of the Tribal Constitution and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band. Further, the Supreme Court held in *United States* v. *Mazurie,* 419 U.S. 544 (1975), that Congress through 18 U.S.C. 1161 delegated to Indian tribes authority to control the introduction, distribution, and consumption of Alcoholic Liquor within Indian country.

Section 4 Short Title. This Code shall be known and cited as the ''Pokagon Band Liquor Control Code (Indiana)''.

Section 5 Scope and Purpose.

(a) The scope of this Code is limited to the areas of Indian country located in the State of Indiana over which the Tribe exercises jurisdiction. The Pokagon Band Liquor Control Code enacted by the Tribal Council on September 9, 2006 by adoption of Resolution No. 06–09–09–12, which was certified by the Secretary of the Interior and published in the **Federal Register** on January 19, 2007 (72 FR 2545)(''Liquor Control Code (Michigan)''), applies solely to the areas of Indian country located in the State of Michigan over which the Tribe exercises jurisdiction. This Code shall have no application to any areas of Indian country located in the State of Michigan.

(b) The purpose of this Code is to prohibit the importation, manufacture, distribution, and Sale of Alcoholic Liquor for commercial purposes on the Reservation except pursuant to a License issued by the Commission under the provisions of this Code and other Tribal laws.

Section 6 Application of 18 U.S.C. 1161. The importation, manufacture, distribution, and Sale of Alcoholic Liquor for commercial purposes on the Reservation shall be ''in conformity with'' this Code and the laws of the State of Indiana as that phrase is used in 18 U.S.C. 1161.

Section 7 Incorporation by Reference of Indiana Laws.

(a) In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as Tribal law those Indiana laws, as amended, relating to the Sale and regulation of Alcoholic Liquor encompassing the following areas: Sale to a minor; Sale to a visibly intoxicated individual; Sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions, including such other laws prohibiting the Sale of Alcoholic Liquor to certain categories of individuals. Said Tribal laws which are defined by reference to the substantive areas of Indiana laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Indiana to off-Reservation transactions unless otherwise agreed by the Tribe and State; provided, that nothing in this Code shall be construed as a consent by the Tribe to the jurisdiction of the State of Indiana or any of its, agencies, courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Code nor shall anything in this Code constitute an express or implied waiver of the sovereign immunity of the Tribe.

(b) In the event of any conflict or inconsistency between ''adopted and applied'' Indiana laws and this Code, the provisions of this Code shall govern to the extent allowed under 18 U.S.C. 1161.

(c) Whenever such Indiana laws are incorporated herein by reference, amendments by the State thereto shall also be deemed to be incorporated upon their effective date in the State of Indiana without further action by the Tribal Council.

Section 8 General Provisions.

(a) *Sales Limited To Permitted Hours.* No Alcoholic Liquor shall be sold, served, or allowed to be consumed on any premises licensed under this Code other than during the hours permitted by Tribal law and the License.

(b) *Sale to Obviously Intoxicated Person.* It shall be a violation of this Code to sell or furnish for consumption on the licensed premises any Alcoholic Liquor to any person who is obviously intoxicated at the time. As used in this subsection, ''obviously intoxicated'' means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

(c) *Distribution off premises.* No Person licensed under this Code shall distribute or deliver any Alcoholic Liquor off the premises described in the License.

(d) *Sale or possession with intent to sell without a License.* Any Person who shall sell or offer for Sale or distribute

or transport in any manner, any Alcoholic Liquor in violation of this Code, or who shall have Alcoholic Liquor in his possession with intent to sell or distribute on the Reservation without a License issued pursuant to this Code shall be guilty of a violation of this Code.

(e) *Purchases from other than Licensed entities or premises.* Any Person who, on the Reservation or within its boundaries, buys Alcoholic Liquor from any Person other than a licensed entity or premises shall be guilty of a violation of this Code.

(f) *Consumption or possession of Alcoholic Liquor by persons under 21 years of age.* No person under the age of 21 years shall consume or Purchase any Alcoholic Liquor on the Reservation or within its boundaries. No person under the age of 21 years shall have for personal consumption any Alcoholic Liquor in his or her possession on the Reservation or within its boundaries. No Person shall permit any person under the age of 21 years to consume Alcoholic Liquor on his or her premises or any premises under his or her control except as expressly permitted under this Code. Upon any attempt to Purchase Alcoholic Liquor on a premises licensed under this Code by a person who appears to be younger than twenty-one (21) years of age, the vendor shall demand, and the prospective purchaser upon such demand shall display, satisfactory evidence that he or she is of legal age. Any Person violating this Section shall be guilty of a separate violation of this Code for each and every Alcoholic Liquor beverage consumed, acquired, or possessed.

(g) *Sales of Alcoholic Liquor to persons under 21 years of age.* It shall be a violation of this Code to sell or furnish any Alcoholic Liquor to a person unless that person has attained 21 years of age. Persons selling Alcoholic Liquor shall make a diligent inquiry as to whether the purchaser is at least 21 years of age. For purposes of this subsection, the term ''diligent inquiry'' means a diligent, good faith effort to determine the age of the purchaser, which includes at least an examination of such person's personal identification to establish the identity and age of the purchaser. Any Person who shall sell or provide Alcoholic Liquor to any person under the age of 21 years shall be guilty of a violation of this Code for every Sale or drink provided.

(h) *Transfer of identification to a minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Alcoholic Liquor shall be guilty of an offense; provided that corroborative testimony of a witness other than the minor shall be required for any finding of a violation of this Code.

(i) *Use of False or Altered Identification.* Any person who attempts to Purchase an Alcoholic liquor beverage through the use of a false or altered identification shall be guilty of violating this Code.

(j) *Acceptable Identification.* Where there may be a question of a person's right to Purchase Alcoholic Liquor by reason of his or her age, such person shall be required to present identification in one of the following forms that displays his or her correct age, signature and photograph:

(1) A driver's license or identification card issued by any state or U.S. territory;

(2) United States active duty military ID;

(3) A passport issued by the United States or any foreign country; or

(4) A Tribal identification card or other tribal identification card recognized by the Commission.

(k) *Sale of Adulterated or Mislabeled Alcoholic Liquor.* It shall be a violation of this Code for any Person, by himself or by his agent or employee, to sell, offer for Sale, or possess any Alcoholic Liquor that is adulterated or misbranded or any Alcoholic Liquor in bottles that have been refilled. For the purposes of this Section, Alcoholic Liquor shall be deemed adulterated if it contains any liquids or other ingredients not placed there by the original Manufacturer or bottler. For the purposes of this Section, Alcoholic Liquor shall be deemed misbranded when not plainly labeled, marked or otherwise designated. For the purposes of this section, Alcoholic Liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original Manufacturer.

Section 9 Administration of Code. The Gaming Commission shall exercise all of the powers and accomplish all of the purposes as set forth in this Code, including the following actions:

(a) Adopt and enforce rules and regulations for the purpose of implementing and enforcing this Code, which includes the setting of fees, *provided* that the Gaming Commission shall provide a minimum public notice and opportunity to comment of sixty (60) days on any proposed rule or regulation before such rule or regulation becomes final and enforceable;

(b) Execute all necessary documents; and

(c) Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Code.

Section 10 Applicability Within the Reservation. This Code shall apply to all Persons on or within the boundaries of the Reservation, consistent with applicable federal laws.

Section 11 Definitions. For the purposes of this Code, words in the present tense include the future; the masculine includes the feminine; the singular includes the plural; and the plural includes the singular. The word ''shall'' is mandatory and the word ''may'' is permissive. In construing the provisions of this Code, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

(a) ''Alcohol'' means the compound C2H5OH, known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) ''Alcoholic Liquor'' means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one half of one percent (0.5%) or more of Alcohol by volume which is fit for use for beverage purposes and human consumption. The term Alcoholic Liquor does not include industrial alcohol.

(c) ''Applicant'' means any Person who submits an application to the Gaming Commission for a License and who has not yet received such a License.

(d) ''Beer'' means an Alcoholic Liquor obtained by the fermentation of an infusion or decoction of barley malt or other cereal and hops in water.

(e) ''Brandy'' means (1) an Alcoholic Liquor as defined in the federal regulations, 27 CFR 5.22(d) (1980) or any successor federal law; or (2) a beverage product that otherwise meets the Indiana statutory definition of ''brandy''.

(f) ''Commission'' and ''Gaming Commission'' means the Pokagon Band Gaming Commission first established by the Pokagon Band Gaming Regulatory Act, as amended.

(g) ''Constitution'' and ''Tribal Constitution'' means the Constitution of the Pokagon Band of Potawatomi Indians of Michigan and Indiana, adopted on November 1, 2005 and approved by the Secretary of the Interior on December 16, 2005, including all subsequent amendments ratified and approved pursuant to Tribal and federal law.

(h) ''Council'' and ''Tribal Council'' means the elected Tribal Council of the

Pokagon Band of Potawatomi Indians acting as the governing body of the Tribe pursuant to the Tribe's Constitution.

(i) ''License'' means an Alcoholic Liquor license issued by the Gaming Commission under the provisions of this Code authorizing the importation, manufacture, distribution, or Sale of Alcoholic Liquor for commercial purposes on or within the Reservation consistent with federal law.

(j) ''Licensee'' means any holder of a License issued by the Gaming Commission pursuant to this Code and includes any employee or agent of the Licensee.

(k) ''Manufacturer'' means any Person engaged in the manufacture of Alcoholic Liquor.

(l) ''Mixed Drink'' means any drink prepared with one or more Alcoholic Liquors or other beverage containing Alcohol, provided that: (1) The mixed drink is served from the vessel in which it was prepared and (2) the Alcoholic Liquor used in the preparation of the mixed drink is drawn directly from the original container in which the Alcoholic Liquor was contained and is poured directly into the vessel in which the mixed drink is to be prepared.

(m) ''Person'' means:

(1) a natural individual, whether Indian or non-Indian;

(2) an Indian tribe, band, or group, whether recognized by the United States or otherwise, including any Tribal Enterprise and Licensee

(3) a firm;

(4) a corporation or joint corporation;

(5) a partnership or limited partnership;

(6) a limited liability company;

(7) an incorporated or unincorporated association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise; or

(8) a receiver, assignee, trustee in bankruptcy, trust estate or other legal entity; whether acting by themselves or by a servant, an agent, or an employee.

(n) ''Purchase'' means to acquire, by Sale or otherwise, individual possession, ownership, or rights to goods or services.

(o) ''Reservation'' means: Pursuant to 25 U.S.C. 1300j–5 or other applicable federal law, (i) all lands located within the State of Indiana, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and (ii) all lands located within the State of Indiana that are proclaimed by the Secretary of the Interior to be part of the Tribe's reservation. The term Reservation includes any rights-of-way running through the Reservation.

(p) ''Secretary of the Interior'' means the Secretary of the United States Department of the Interior.

(q) ''Sacramental Wine'' means Wine containing not more than twenty-four percent (24%) of Alcohol by volume and is used for sacramental purposes.

(r) ''Sale'' means the exchange, barter, traffic, furnishing, or giving away for commercial purposes of possession, ownership, or rights to goods or services.

(s) ''Tribal Court'' means the Tribal Court of the Pokagon Band of Potawatomi Indians.

(t) ''Tribal Enterprise'' means the Tribe or any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe, where the organic documents establishing such enterprise expressly allow for the Sale of Alcoholic Liquor.

(u) ''Tribal Law'' means the Tribal Constitution and all laws, acts, codes, and resolutions now and hereafter duly enacted by the Tribal Council and any rules or regulations duly promulgated by the Gaming Commission pursuant to this Code.

(v) ''Tribe'' means, and ''Tribal'' refers to, the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

(w) ''Wine'' means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than twenty-one percent (21%) of Alcohol by volume, including hard cider and other fermented fruit juices other than grapes and mixed wine drinks.

Section 12 Interpretation and Findings. The Gaming Commission in the first instance may interpret any ambiguities contained in this Code.

Section 13 Liberal Construction. The provisions of this Code shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

Section 14 Computation of Time. Unless otherwise provided in this Code, in computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For the purposes of this Code, the term ''legal holiday'' shall mean all legal holidays under Tribal Law.

Section 15 Prohibition of Unlicensed Sale of Alcoholic Liquor. This Code prohibits the importation, manufacture, distribution, or Sale of Alcoholic Liquor for commercial purposes other than where conducted by a Tribal Enterprise in accordance with this Code. No License shall be issued to any Person other than a Tribal Enterprise. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Code, and violators shall be subject to federal law. Consistent with *United States* v. *Wheeler,* 435 U.S. 313 (1978), nothing shall prevent both federal and Tribal jurisdiction to enforce this Code.

Section 16 Sales of Alcoholic Liquor.

(a) Sales for Cash. All Alcoholic Liquor Sales on the Reservation or within its boundaries shall be on a cash or cash equivalent basis, including the use of ATM cards, debit cards, checks, major credit cards, or other instruments approved by the Gaming Commission.

(b) Sales for Personal Consumption. All Alcoholic Liquor Sales shall be for the personal use and consumption by the purchaser. Resale of any Alcoholic Liquor Purchased on the Reservation or within its boundaries is prohibited. Any Person not licensed pursuant to this Code who Purchases Alcoholic Liquor on the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Code.

Section 17 Authorization to Sell Alcoholic Liquor. Any Tribal Enterprise applying for and obtaining a License under the provisions of this Code shall have the right to engage only in those Alcoholic Liquor transactions expressly authorized by such License and only at those specific places or areas designated in said License.

Section 18 Limitation of the Commission's Powers. The Commission's powers under this Code shall be limited as follows:

(a) The Commission may only issue a License permitting the Sale of Alcoholic Liquor on those areas of the Reservation where such activities have been authorized by the Tribal Council.

(b) In the exercise of its powers and duties under this Code, the Commission and its individual members shall be subject to the Pokagon Band Code of Ethics.

Section 19 Classes of Licenses. The Commission shall have the authority to issue any one or more of the following classes of Licenses within the Reservation:

(a) ''Retail on-sale general License'' means a License authorizing the Applicant to sell Alcoholic Liquor at

retail to be consumed by the buyer only on the premises or at the location designated in the License. This class includes, without limitation, hotels where Alcoholic Liquor may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(b) ''Retail on-sale Beer and Wine License'' means a License authorizing the Applicant to sell Beer and Wine at retail to be consumed by the buyer only on the premises or at the location designated in the License. This class includes, without limitation, hotels where Beer and/or Wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(c) ''Retail off-sale general License'' means a License authorizing the Applicant to sell Alcoholic Liquor at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

(d) ''Retail off-sale Beer and Wine License'' means a License authorizing the Applicant to sell Beer and Wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

(e) ''Manufacturer's License'' means a License authorizing the Applicant to manufacture Alcoholic Liquor for the purpose of Sale on the Reservation.

(f) ''Temporary License'' means a License authorizing the Sale of Alcoholic Liquor on a temporary basis for premises temporarily occupied by the Licensee for a picnic, social gathering, or similar occasion. The Commission may, by appropriate Commission action, limit or restrict the number of Licenses issued or in effect in its sole discretion.

Section 20 Application Form and Content. An application for a License shall be made to the Commission and shall contain the following information:

(a) The name and address of the Licensee, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the Sale of Alcoholic Liquor;

(b) The specific area, location, and/or premise(s) sought to be licensed;

(c) The class of License applied for (*e.g.,* retail on-sale general License, etc.);

(d) Whether a state Alcoholic Liquor license has been issued to the Applicant;

(e) A sworn statement by the Applicant to the effect that none of the Applicant's officers and directors, and employees with primary management responsibility related to the Sale of Alcoholic Liquor were ever convicted of a felony under any law and have not violated and will not violate or cause or permit to be violated any of the provisions of this Code; and

(f) The application shall be verified under oath and notarized by a duly authorized representative.

Section 21 Transfer of License. Each License issued or renewed under this Code is separate and distinct and is transferable from one Licensee to another and/or from one premise to another only with the approval of the Gaming Commission. The Commission shall have the authority to approve, deny, or approve with conditions any application for the transfer of any License. The transfer application shall contain all of the information required of an original Applicant under Section 20 of this Code and shall be signed by both the Licensee and transferee. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the Alcoholic Liquor is proposed to be sold.

Section 22 Term and Renewal of License. All Licenses shall be issued on a calendar year basis and shall be renewed annually. The Applicant shall renew a License by, prior to the License's expiration date, submitting a written renewal application to the Gaming Commission on the provided form, and paying the annual License fee for the next year.

Section 23 Investigation. Upon receipt of an application for the issuance, renewal, or transfer of a License, the Gaming Commission shall make a thorough investigation to determine whether the Applicant and the premises for which a License is applied for qualify for a License. The Commission shall investigate all matters related to the eligibility of the Applicant and the premises for a License under the requirements of this Code, including matters that may affect public health, safety, or welfare. The Commission shall specifically conclude whether the provisions of this Code have been complied with by the Applicant and the premises.

Section 24 Public Hearing. Upon receipt of an application for issuance or transfer of a License, and the payment of all fees required under this Code, the Gaming Commission shall set the matter for a public hearing. A hearing shall not be required for a License renewal unless required by the Commission in its discretion based on information provided in the Applicant's renewal application indicating that there has been a material change in the Applicant's ownership or control or based on other matters that may affect the Applicant's continued eligibility for a License. Notice of the time and place of the hearing shall be given at least twenty (20) calendar days before the hearing to the Applicant by United States mail, postage prepaid, at the address listed in the application or any other reasonable method adopted by the Commission. The Commission shall also provide notice to the public of the time, place, and purpose of the hearing by publication in a Tribal newspaper, a newspaper of general circulation sold on the Reservation, public posting or other reasonable method. The public notice shall include the name of the Applicant, whether the action involves a new issuance, renewal, or transfer, the class of License applied for, and a general description of the area where the Alcoholic Liquor will be or has been sold. The hearing shall be conducted before the Gaming Commission under such rules of procedure as it may adopt. The Gaming Commission shall hear from any Person who wishes to speak for or against the application, subject to such limitations as the Commission may issue in the course of the hearing regarding the length, relevance, or repetitiveness of each speaker's testimony.

Section 25 Gaming Commission Action on the Application. The Gaming Commission shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Commission shall have the authority to deny, approve, or approve the application with conditions. Upon approval of an application, the Commission shall issue a License to the Applicant in a form to be approved from time to time by the Commission. Solely for purposes of this Section and Section 26, the term ''Applicant'' includes a Licensee that applies for a License renewal and a Licensee and the proposed transferee that apply for a License transfer.

Section 26 Denial of License, Renewal, or Transfer. An application for a new License, License renewal, or License transfer may be denied for one or more of the following reasons:

(a) The Applicant has materially misrepresented facts contained in the application;

(b) The Applicant is presently not in compliance with Tribal or federal laws;

(c) Granting of the License (or renewal or transfer thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

(d) The Applicant has failed to complete the application properly or has failed to tender the appropriate fee; or

(e) A plea, verdict, or judgment of guilty, or the plea of *nolo contendere* by an Applicant's officer or director, or an employee with primary management responsibility related to the Sale of

Alcoholic Liquor, to any offense under any federal or state law prohibiting or regulating the Sale, use, possession, or giving away of Alcoholic Liquor; or

(f) The Applicant has a suspended or revoked state Alcoholic Liquor license.

Section 27 Temporary Denial. If the application is denied solely on the basis of subsections 26(b) or 26(d), the Gaming Commission shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the Applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

Section 28 Multiple Locations. Each License shall be issued to a specific Licensee. Separate Licenses shall be issued for each of the premises of any business establishment having more than one address.

Section 29 Posting of License. Every Licensee shall post and keep posted its License(s) in a conspicuous place(s) on the licensed premises.

Section 30 Suspension or Revocation of License. Any one of the following actions or inactions by a Licensee shall constitute grounds for the suspension or revocation of a License:

(a) Material misrepresentation of facts contained in any License application;

(b) Not in compliance with Tribal or federal laws;

(c) Failure to comply with any condition of the License, including failure to pay a required fee;

(d) A plea, verdict, or judgment of guilty, or a plea of *nolo contendere* to any offense under federal or state law prohibiting or regulating the Sale, use, possession, or giving away of Alcoholic Liquor entered against one of its officers, directors, or employees with primary management responsibility related to the Sale of Alcoholic Liquor;

(e) Failure to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Commission or its authorized representative; or

(f) Suspension or revocation of the Licensee's state Alcoholic Liquor license.

Section 31 Initiation of Suspension or Revocation Proceedings. Suspension or revocation proceedings are initiated by the Gaming Commission either:

(a) On the Commission's own initiative through adoption of a resolution that sets forth allegations that if substantiated, would provide grounds under this Code for the Commission to suspend or revoke the License(s); or

(b) based on a signed request by any Person and filed with the Commission that alleges facts that would, if substantiated, provide grounds under this Code for the Commission to suspend or revoke the License(s).

The Gaming Commission shall cause the matter to be set for a hearing before the Commission on a date not later than thirty (30) days from the Commission's adoption of the resolution or its receipt of a request. Notice of the time, date, and place of the hearing shall be given the Licensee and the public in the same manner as set forth in Section 24. The notice shall state that the Licensee has the right to file a written response, verified under oath and signed by the Licensee, five (5) days prior to the hearing date.

If the Gaming Commission determines that the grounds for suspension or revocation of a License are supported by reliable evidence and that such grounds pose a substantial risk of imminent harm to the health, welfare, or safety of the public, the Gaming Commission may immediately suspend such License *provided* that such emergency suspension may not exceed three (3) calendar days without a hearing.

Section 32 Hearing. The hearing shall be held before the Gaming Commission under such rules of procedure as it may adopt. Both the Licensee and the Person filing the request may present witnesses to testify and to present written documents in support of their positions to the Gaming Commission. The Gaming Commission may issue limitations in the course of the hearing regarding the length, relevance, or repetitiveness of each witness's testimony. The Gaming Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Gaming Commission shall be final.

Section 33 Delivery of License. A Licensee, upon suspension or revocation of such License, shall promptly return the License to the Gaming Commission. In cases involving suspension, the Gaming Commission shall return the License to the Licensee at the expiration or termination of the suspension period, with a memorandum of the suspension written or stamped upon the face thereof in red ink.

Section 34 General Penalties. Any Person adjudged to be in violation of this Code, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil fine of not more than five hundred dollars ($500.00) for each such violation. The Gaming Commission may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties that may be imposed under applicable law.

Section 35 Initiation of Action. Any violation of this Code shall constitute a public nuisance. The Gaming Commission, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court to abate and permanently enjoin any nuisance declared under this Code. Any action taken under this section shall be in addition to any other penalties provided for in this Code. The plaintiff shall not be required to give bond in this action.

Section 36 Inspection. Immediately upon the request of a law enforcement officer or a Commission investigator empowered to enforce this Code and the rules and regulations promulgated hereunder, a Licensee shall make the licensed premises available for inspection and search during regular business hours or when the licensed premises are occupied by the Licensee, including the Licensee's employees and agents.

Section 37 Contraband; Seizure; Forfeiture.

(a) All Alcoholic Liquor within the Reservation held, owned, or possessed by any Person or Licensee operating in violation of this Code is hereby declared to be contraband and subject to forfeiture to the Tribe.

(b) Within three (3) weeks following the seizure of the contraband, a hearing shall be held by the Gaming Commission, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

(c) Notice of the hearing shall be given to the Person from whom the property was seized, if known prior to hearing. If the Person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the Person from whom the property was seized.

(d) If upon hearing, the evidence warrants, or if no Person appears as a claimant, the Gaming Commission shall

thereupon enter a determination of forfeiture and order such contraband sold or destroyed forthwith.

Section 38 Disposition of Proceeds. The gross proceeds collected by the Commission from licensing shall be distributed as follows:

(a) First, to the Commission for the payment of all necessary personnel, administrative costs, and legal fees for the administration of the provisions of this Code; and

(b) Second, to the Tribe any remainder.

Section 39 Appeals. Appeals under this Code may only be brought in the Pokagon Band Tribal Court by an Applicant or a Licensee to:

(a) Challenge a final Gaming Commission decision to deny a License, to deny an application to renew or transfer a License, or to revoke a License; or

(b) to compel a Gaming Commission decision or action unreasonably delayed or unlawfully withheld more than sixty (60) days beyond any mandatory time limit established by law.

The Tribal Court shall hold unlawful and set aside any Gaming Commission decision it finds to be arbitrary, not in accordance with law, in excess of statutory authority, or unsupported by substantial evidence in the record. The Tribal Court shall give deference to the Gaming Commission's reasonable interpretations of this Code and any rules or regulations promulgated hereunder.

Section 40 License Not a Property Right. Notwithstanding any other provision of this Code, a License is a mere permit for a fixed duration of time. A License shall not be deemed a property right or vested right of any kind, nor shall the granting of a License give rise to a presumption of legal entitlement to the granting of such License for a subsequent time period.

Section 41 Savings Clause. In the event any provision of this Code shall be found or declared to be invalid by a court of competent jurisdiction, all of the remaining provisions of this Code shall be unaffected and shall remain in full force and effect.

Section 42 Effective Date. The effective date of this Code is the date that the Secretary of the Interior publishes the same in the **Federal Register**.

Section 43 Prior Inconsistent Acts. Except as provided otherwise under applicable federal law, this Code shall be the exclusive Tribal Law governing the introduction, distribution, Sale and regulation of Alcoholic Liquor within the Reservation. Excluding the Liquor Control Code (Michigan), this Code shall supersede any and all Tribal Laws that are inconsistent with the provisions of this Code, and such laws are hereby rescinded and repealed.

Section 44 Sovereign Immunity Preserved.

(a) The Tribe, and all of its constituent parts, which includes but is not limited to Tribal Enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribe.

(b) Nothing in this Code, and no enforcement action taken pursuant to this Code or otherwise, including without limitation the filing of suit by the Gaming Commission to enforce any provision of this Code or other Tribal Law, shall constitute a waiver of such sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

[FR Doc. 2016–28749 Filed 11–28–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Number 1010–0114]

Information Collection: General and Oil and Gas Production Requirements in the Outer Continental Shelf; Submitted for OMB Review; Comment Request

ACTION: 30-day notice.

MMAA104000

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR pertains to the paperwork requirements in the regulations under 30 CFR 550, Subparts A, General; and K, Oil and Gas Production Requirements, as well as associated forms. The Office of Management and Budget (OMB) has assigned control number 1010–0114 to this information collection. This notice provides the public a second opportunity to comment on the paperwork burden of this collection.

DATES: Submit written comments by December 29, 2016.

ADDRESSES: Submit comments on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_submission@omb.eop.gov* (email). Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, 135–C10, Sterling, Virginia 20166 (mail) or *anna.atkinson@boem.gov* (email). Please reference ICR 1010–0114 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Anna Atkinson, Office of Policy, Regulations, and Analysis at *anna.atkinson@boem.gov* (email) or (703) 787–1025 (phone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on September 16, 2016 (81 FR 63799), and the comment period ended November 15, 2016. BOEM received no comments.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' BOEM now requests comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden estimates; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology. Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1010–0114 in your correspondence.

The following information pertains to this request:

OMB Control Number: 1010–0114.

Title: 30 CFR 550, Subpart A, General, and Subpart K, Oil and Gas Production Requirements.

Forms:

• BOEM–0127, Sensitive Reservoir Information Report;

• BOEM–0140, Bottomhole Pressure Survey Report;

• BOEM–1123, Designation of Operator; and

• BOEM–1832, Notification of Incidents of Non-Compliance.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations in the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and techniques sufficient to prevent or minimize . . . loss of well control . . . physical obstructions to users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25 authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Bureau of Ocean Energy Management (BOEM) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public.

This ICR covers 30 CFR 550, Subpart A, General, and Subpart K, Oil and Gas Production Requirements, which deal with regulatory requirements of oil, gas, and sulphur operations on the OCS. This request also covers the related Notices to Lessees and Operators (NTLs) that BOEM issues to clarify and provide guidance on some aspects of our regulations, and forms BOEM–0127, BOEM–0140, BOEM–1123, and BOEM–1832.

The BOEM uses the information collected under the Subpart A and K regulations to ensure that operations in the OCS are carried out in a safe and environmentally sound manner, do not interfere with the rights of other users in the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

• Determine the capability of a well to produce oil or gas in paying quantities or to determine the possible need for additional wells resulting in minimum royalty status on a lease.

• Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures if they demonstrate equal or better compliance with the appropriate performance standards.

• Ensure that subsurface storage of natural gas does not unduly interfere with development and production operations under existing leases.

• Record the designation of an operator authorized to act on behalf of the lessee/operating rights owner and to fulfill their obligations under the OCS Lands Act and implementing regulations, or to record the local agent empowered to receive notices and comply with regulatory orders issued (Form BOEM–1123, Designation of Operator). This form requires the respondent to submit general information such as lease number, name, address, company number of designated operator, and signature of the authorized lessee and designated operator. With this renewal, BOEM is adding a signature line for the designated operator. We also updated the form instructions by removing references to the Gulf of Mexico, so this form can be used nationally.

• Determine if an application for right-of-use and easement complies with the OCS Lands Act, other applicable laws, and BOEM regulations; and does not unreasonably interfere with the operations of any other lessee.

• Provide for orderly development or disqualification of leases to determine the appropriateness of lessee/operator performance.

• Approve requests to cancel leases and ascertain if/when the Secretary may cancel leases.

• Ensure the protection of any discovered archaeological resources.

• Regulate production rates from sensitive reservoirs (Form BOEM–0127, Sensitive Reservoir Information Report). BOEM engineers and geologists use the information for rate control and reservoir studies. The form requests general information about the reservoir and the company, volumetric data, and fluid analysis and production data.

• Manage reservoirs in our efforts to conserve natural resources, prevent waste, and protect correlative rights, including the Government's royalty interest (Form BOEM–0140, Bottomhole Pressure Survey Report). Specifically, BOEM uses the information in reservoir evaluations to determine maximum production and efficient rates and to review applications for downhole commingling to ensure that action does not harm ultimate recovery or undervalued royalties. The form requests information about the well and operator; test data information such as shut-in time, bottomhole temperature, kelly bushing elevation; and bottomhole pressure points that consist of measured depth(s), true vertical depth(s), pressure(s), and pressure gradient(s).

• Determine that respondents have corrected any Incidents of Non-Compliance (INCs), Form BOEM–1832, identified during compliance reviews. The BOEM issues this form to the operator and the operator then corrects the INC(s), signs and returns the form to the BOEM Regional Supervisor.

We will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR 2), 30 CFR 252, and 30 CFR 550.197, ''Data and information to be made available to the public or for limited inspection.'' Proprietary information concerning geological and geophysical data will be protected according to 43 U.S.C. 1352. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Primarily on occasion; monthly.

Description of Respondents: Federal oil and gas and sulphur lessees/operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this collection is 30,635 hours. The following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 550 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Authority and Definition of Terms				
104; 181; Form BOEM–1832	Appeal orders or decisions; appeal INCs; request hearing due to cancellation of lease.	Exempt under 5 CFR 1320.4(a)(2), (c)		0
Performance Standards				
115; 116	Request determination of well producibility; make available or submit data and information; notify BOEM of test.	5	90 responses	450
119	Apply for subsurface storage of gas; sign storage agreement.	10	3 applications	30
Subtotal			93 responses	480
Cost Recovery Fees				
125; 126; 140	Cost Recovery Fees; confirmation receipt etc; verbal approvals and written request to follow. Includes request for refunds.	Cost Recovery Fees and related items are covered individually throughout this subpart.		0
Designation of Operator				
143	Report change of name, address, etc	Not considered information collection under 5 CFR 1320.3(h)(1).		0
143(a–c); 144; 145; Form BOEM–1123.	Submit designation of operator (Form BOEM–1123—form takes 30 minutes); report updates; notice of termination; submit designation of agent. Request exception. NO FEE.	1	2,584 forms	2,584
143(a–d); 144; 145; Form BOEM–1123.	Change designation of operator (Form BOEM–1123—form takes 30 minutes); report updates; notice of termination; submit designation of agent; include pay.gov confirmation receipt. Request exception. SERVICE FEE.	1	930 forms	930
		$175 fee × 930 = $162,750		
186(a)(3); NTL	Apply for user account in TIMS (electronic/digital form submittals).	Not considered information collection under 5 CFR 1320.3(h)(1).		0
Subtotal			3,514 responses	3,514
			$162,750 non-hour cost burden	
Compliance				
101; 135; 136; Form BOEM–1832.	Submit response and required information for INC, probation, or revocation of operating status. Notify when violations corrected.	2	94 submissions	188
	Request waiver of 14-day response time or reconsideration.	1	1	1
135; 136	Request reimbursement for services provided to BOEM representatives during reviews; comment.	1.5	2 requests	3
Subtotal			97 responses	192

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Special Types of Approval				
125(c); 140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1	100 requests	100
141; 101–199	Request approval to use new or alternative procedures; submit required information.	20	100 requests	2,000
142; 101–199	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements; submit required information.	2.5	100 requests	25
Subtotal			300 responses	2,350
Right-of-use and Easement				
160; 161; 123	OCS lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; include notifications and submitting required information.	9	26 applications	234
160(c)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	Burden covered under 30 CFR 556 (1010–00 06)		0
160; 165; 123	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; include pay.gov confirmation and notifications.	5	1 application	5
		$2,742 state lease fee × 1 = $2,742		
166	State lessees: Furnish surety bond; additional security if required.	Burden covered under 30 CFR 556 (1010–0006).		0
Subtotal			27 responses	239
			$2,742 non-hour cost burden	
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations				
181(d); 182(b), 183(a)(b)	Request termination of suspension, cancellation of lease, lesser lease term (no requests in recent years for termination/cancellation of a lease; minimal burden).	20	1 request	20
182; 183, 185; 194	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document, and related surveys/reports.	Burden covered under 30 CFR 550, Subpart B (1010–0151)		0
184	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50	1 request	50
Subtotal			2 responses	70

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours
Information and Reporting Requirements				
186(a)	Apply to receive administrative entitlements to eWell/TIMS system for electronic submissions.	Not considered IC under 5 CFR 1320.3(h)(1)		0
186; NTL	Submit information, reports, and copies as BOEM requires.	10	125	1,250
135; 136	Report apparent violations or non-compliance.	1.5	2 reports	3
194; NTL	Report archaeological discoveries. Submit archaeological and follow-up reports and additional information.	2	6 reports	12
194; NTL	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1	2 requests	2
194	Submit ancillary surveys/investigations reports, as required.	Burden covered under 30 CFR 550 Subpart B (1010–0151).		0
196	Submit data/information for G&G activity and request reimbursement.	Burden covered under 30 CFR 551 (1010–00 48).		0
197(b)(2)	Demonstrate release of G&G data would unduly damage competitive position.	1	1	1
197	Submit confidentiality agreement	1	1	1
Subtotal			137 responses	1,269
Recordkeeping				
135; 136	During reviews, make records available as requested by inspectors.	2	7 reviews	14
Subtotal			7 responses	14
Citation 30 CFR 550 Subpart K and Related Forms	Well surveys and classifying reservoirs	Hour burden	Average number of annual responses.	Annual burden hours
1153	Conduct static bottomhole pressure survey; submit Form BOEM–0140 (Bottomhole Pressure Survey Report) (within 60 days after survey).	14	1,161 surveys	16,254
1153(d)	Submit justification, information, and Form BOEM–0140, to request a departure from requirement to run a static bottomhole survey.	1	200 survey departures	200
1154; 1167	Submit request and supporting information to reclassify reservoir.	1	15 requests	15
1155; 1165(b); 1166; 1167	Submit Form BOEM–0127 (Sensitive Reservoir Information Report) and supporting information/revisions (within 45 days after certain events or at least annually). AK Region: submit BOEM–0127 and request MER.	3	2,012 forms	6,036
1153–1167	Request general departure or alternative compliance requests not specifically covered elsewhere in regulatory requirements.	1	2	2
1165	Submit proposed plan for enhanced recovery operations to BSEE.	Burden covered under BSEE 30 CFR 250 (1014 –0019).		0
Subtotal			3,390 responses	22,507
Total Burden			7,567 Responses	30,635
			$165,492 Non-Hour Cost Burdens	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified two non-hour cost burdens. Section 550.143 requires a fee for a change in designation of operator ($175). Section 550.165 requires a State lessee applying for a right-of use and easement in the OCS to pay a cost recovery application fee ($2,742). The total non-hour cost burden for this collection is estimated at $165,492.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 21, 2016.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2016–28542 Filed 11–28–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on October 25, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PDFTron Systems Inc., Vancover, British Columbia, CANADA; and Purdue University West Lafayette, IN, have been added as parties to this venture.

Also, DISCUS Software Company, Columbus, OH; and Capvidia NA LLC, New Ulm, MN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on August 5, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64507).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–28709 Filed 11–28–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0104]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Alternate Means of Identification of Firearm(s) (Marking Variance) (ATF Form 3311.4)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 January 30, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Mark Pawielski, Firearm & Ammunition Technology Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Mark.Pawielski@atf.gov,* or by telephone at 304 616 4304.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection (check justification or form 83–I):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Alternate Means of Identification of Firearm(s) (Marking Variance).

3. *The agency form number, if any, and the applicable component of the Departments sponsoring the collection:*

Form number (if applicable): ATF Form 3311.4.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Federal Government.

Abstract: The ATF Form 3311.4 provides a uniform mean for industry members with a valid Federal importer or manufacturer license, to request firearms marking variance.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,064 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,032 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: November 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–28609 Filed 11–28–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On November 22, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and State of Indiana, Michigan Department of Environmental Quality and State of Illinois* v. *United States Steel Corporation,* Civil Action No. 2:12–cv–304.

The proposed Consent Decree puts an end to litigation and resolves allegations in the Clean Air Act Complaint filed on August 1, 2012, by the United States on behalf of the U.S. Environmental Protection Agency and by Co-Plaintiffs the State of Indiana, the Michigan Department of Environmental Quality and the State of Illinois, against Defendant U.S. Steel Corporation (U.S. Steel). Under the proposed Decree, U.S. Steel agrees to undertake measures to reduce pollution and improve environmental compliance at its three Midwest iron and steel manufacturing plants in Gary, Indiana; Ecorse, Michigan; and Granite City, Illinois. U.S. Steel also agrees to pay a $2.2 million civil penalty; perform seven supplemental environmental projects, valued at $1.9 million, in the communities affected by U.S. Steel's pollution; and conduct an environmentally beneficial project, valued at $800,000, at two of its affected plants.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al* v. *United States Steel Corporation,* D.J. Ref. No. 90–5–2–1–06476/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.75 (25 cents per page reproduction cost), payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–28599 Filed 11–28–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested Extension Without Change, of a Previously Approved Collection Federal Coordination and Compliance Section (FCS), FCS Complaint and Consent Form Civil Rights Division, Department of Justice

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Federal Coordination and Compliance Section, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This collection was previously published in the **Federal Register** at 81 FR 64512, on September 20, 2016, allowing for a 60 day public comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 29, 2016.

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 Christine Stoneman, Acting Chief, Federal Coordination and Compliance Section, 950 Pennsylvania Avenue NW–NWB, Washington, DC 20005 (phone: 202–307–2222). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Complaint and Consent Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1190–0008. The applicable component within the Department of Justice is the Federal Coordination and Compliance Section, in the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* General public.

Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the complaint. Respondents are individuals.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete each form within approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,000 total annual burden hours associated with this collection.

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, Room 3W–1407B, 145 N Street NE., Washington, DC 20530.

Dated: November 22, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–28608 Filed 11–28–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Application Data

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), Employment Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Application Data.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

DATES: Consideration will be given to all written comments received by January 30, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Andrea Kyle by telephone at 202–693–3008, TTY 877–889–5627, (these are not toll-free numbers) or by email at *Kyle.Andrea@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW., Room N4507, Washington, DC 20210; by email: *Kyle.Andrea@dol.gov;* or by Fax 202–693–2767.

FOR FURTHER INFORMATION CONTACT: Contact Andrea Kyle by telephone at 202–693–3008 (this is not a toll-free number) or by email at *Kyle.Andrea@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 51 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 126 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSD), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 99 Job Corps centers under contractual agreements with DOL. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 27 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. The DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Job Corps Application Data, OMB control number 1205–0025.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without change.

Title of Collection: Job Corps Application Data.

Form(s): ETA Form 652, ETA Form 655, ETA Form 682.

OMB Control Number: 1205–0025.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 69,700.

Frequency: Once.

Total Estimated Annual Responses: 145,961.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 13,106.

Total Estimated Annual Other Cost Burden: 0.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–28705 Filed 11–28–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Expenditure Surveys: Quarterly Interview and Diary

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''Consumer Expenditure Surveys: Quarterly Interview and Diary,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 29, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1220-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Consumer Expenditure Surveys: Quarterly Interview and Diary. The BLS uses the Consumer Expenditure Surveys to gather information on expenditures, income, and other related subjects. The data is updated periodically in the national Consumer Price Index. In addition, the data is used by a variety of researchers in academia, government agencies, and the private sector. The data is collected from a national probability sample of households designed to represent the total civilian non-institutional population. The purpose of this revision request is to make changes to the two Consumer Expenditure (CE) Surveys: The Quarterly Interview Survey (CEQ) and the Diary Survey (CED) as part of an ongoing effort to improve data quality, maintain or increase response rates, and reduce data collection costs. The Census Authorizing Statute and BLS Authorizing Statute authorize this information collection. *See* 13 U.S.C. 8b and 29 U.S.C. 2.

The ICR has been characterized as a revision for several reasons. More specifically, three major changes are proposed for the CED. (1) In an effort to alleviate burden and improve response rates, an alternative version of the paper CED has been developed. The new version consolidates the four main diary categories into two, facing, diary pages so that all expenses for a single day can be entered without flipping pages. An effort was also made to reduce the amount of instructions and examples so that respondents are not confused or intimidated. (2) The earliest placement date and last placement date restrictions for the Diary will be removed allowing Field Representatives to place the diary on any day within the collection month. (3) In order to simplify procedures and reduce costs, all Diaries will be double placed. As a result, the second Field Representative interview to pick up the Week 1 Diary and place the Week 2 Diary will be eliminated. Additionally, the CE will delete several tax questions that were deleted from CEQ in 2015 as data received from the IRS have enabled CE to calculate this data rather than collect it. Several changes will also be implemented in CEQ in order to keep the CEQ questionnaire current. These changes include changes to question wording, deletions, additions, and section restructurings.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0050. The current approval is scheduled to expire on June 30, 2019; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 30, 2016 (81 FR 42731).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal**

Register. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0050.

The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Consumer Expenditure Surveys: Quarterly Interview and Diary.

OMB Control Number: 1220–0050.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 13,927.

Total Estimated Number of Responses: 57,732.

Total Estimated Annual Time Burden: 56,718 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 22, 2016.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–28735 Filed 11–28–16; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0001]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of a NACOSH meeting.

SUMMARY: NACOSH will meet December 14, 2016, in Washington, DC. In conjunction with that meeting, the NACOSH Occupational Safety and Health (OSH) Professionals Pipeline Work Group will meet December 13, 2016.

DATES:

NACOSH meeting: NACOSH will meet from 9 a.m. to 5 p.m., Wednesday, December 14, 2016.

NACOSH Work Group meeting: The NACOSH OSH Professionals Pipeline Work Group will meet from 9 a.m. to 5 p.m., Tuesday, December 13, 2016.

Comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address NACOSH, speaker presentations, and requests for special accommodations for the NACOSH and NACOSH Work Group meetings by December 7, 2016.

ADDRESSES: *NACOSH and NACOSH Work Group meetings:* NACOSH and the NACOSH Work Group will meet in Room N–4437, Conference Rooms A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and speaker presentations: You must submit comments and request to speak at the NACOSH meeting, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2016–0001), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger/courier service (hard copy): You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2016–0001, Room N–3653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (887) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) from 10 a.m. to 3 p.m. e.t., weekdays.

Requests for special accommodations: Please submit requests for special accommodations to attend the NACOSH and NACOSH Work Group meetings by email, telephone, or hard copy to Ms. Michelle Walker, Director, OSHA Technical Data Center, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (887) 889–5627); email *walker.michelle@dol.gov.*

Instructions: Your submissions must include the Agency name and the docket number for this **Federal Register** notice (Docket No. OSHA–2016–0001). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, or messenger/courier service. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post in the NACOSH docket, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (TTY (877) 889–5627); email *meilinger.francis2@dol.gov.*

For general information: Ms. Michelle Walker, Director, OSHA Technical Data Center, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627); email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION: *NACOSH meeting:* NACOSH will meet Wednesday, December 14, 2016, in Washington, DC. NACOSH meetings are open to the public. Some NACOSH members may attend the meeting by teleconference.

The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) established NACOSH to advise, consult with and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a).

The tentative agenda for the NACOSH meeting includes:

- An update from the Assistant Secretary of Labor for Occupational Safety and Health on key OSHA initiatives;
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- Consideration of draft regulatory text that the NACOSH Emergency Response and Preparedness Subcommittee developed. (To read or download subcommittee documents in the NACOSH docket, go to Docket No. OSHA–2015–0019 at *http://www.regulations.gov);* and
- An update on the NACOSH OSH Professionals Pipeline Work Group meeting.

OSHA transcribes and prepares detailed minutes of NACOSH meetings. OSHA posts transcripts and minutes in the public docket along with written comments, speaker presentations, and other materials submitted to NACOSH or presented at NACOSH meetings.

NACOSH Work Group meeting: The NACOSH OSH Professionals Pipeline Work Group will meet Tuesday, December 13, 2016. The meeting is open to the public. The purpose of the meeting is to continue discussions on promoting careers in occupational safety and health and growing the next generation of OSH professionals. The work group will also hear from the National Institute of Occupational Safety and Health about their related programs and initiatives.

Public Participation, Submissions and Access to Public Record

NACOSH and NACOSH Work Group meetings: All NACOSH and NACOSH Work Group meetings are open to the public. Attendees must enter the Department of Labor Building at the 3rd and C Street Visitors' entrance and have valid government-issued photo identification (*e.g.,* driver's license) for entry. For additional information about building security measures for attending the NACOSH and NACOSH Work Group meetings, please contact Ms. Walker (see **ADDRESSES** section).

Individuals requesting special accommodations to attend the NACOSH and NACOSH Work Group meetings should contact Ms. Walker.

Submission of comments: You must submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2016–0001). OSHA will provide copies of submissions to the NACOSH members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger/courier service, please contact the OSHA Docket Office.

Requests to speak and speaker presentations: If you want to address NACOSH at the meeting you must submit a request to speak, as well as any written or electronic presentation, by December 7, 2016, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The NACOSH Chair may grant requests to address NACOSH as time and circumstances permit.

Public docket of NACOSH meetings: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the NACOSH docket, without change. Those documents also may be available online at *http://www.regulations.gov*. Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

OSHA also places in the NACOSH docket meeting transcripts, meeting minutes, documents presented at the NACOSH meeting, and other documents pertaining to the NACOSH and NACOSH Subcommittee/Work Group meetings. These documents may be available online at *http://www.regulations.gov*.

Access to the public record of NACOSH meetings: To read or download documents in the NACOSH docket, go to Docket No. OSHA–2016–0001 at *http://www.regulations.gov*. The index for that Web page lists all of the documents in the docket; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the NACOSH docket, including materials not available through *http://www.regulations.gov,* are available in the OSHA Docket Office. Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the NACOSH docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, also are available on OSHA's Web page at *http://www.osha.gov*.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 5 U.S.C. App. 2; 29 U.S.C. 656; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on November 22, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–28581 Filed 11–28–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collection—Housing Occupancy Certificates Under the Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 30, 2017.

ADDRESSES: You may submit comments identified by OMB Control Number 1235–0006, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.* The MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The MSPA also requires farm labor contractors and farm labor contractor employees to register with the U.S. Department of Labor and to obtain special authorization before housing, transporting, or driving covered workers. The MSPA requires that any person owning or controlling any facility or real property to be used for housing migrant agricultural workers shall not permit such housing to be occupied by any worker unless copy of a certificate of occupancy from the state, local or federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. The certificate attests that the facility or real property meets applicable safety and health standards. Form WH–520 is an information gathering form and the certificate of occupancy that the Wage and Hour Division issues when it is the federal agency conducting the safety and health inspection.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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 submissions of responses.

III. Current Actions: The DOL seeks an approval for the extension of this information collection that requires any person owning or controlling any facility or real property to be occupied by migrant agricultural workers to obtain a certificate of occupancy.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1235–0006.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: 100.

Total Annual Responses: 100.

Estimated Total Burden Hours: 7.

Estimated Time per Response: 3–4 minutes.

Frequency: Annual.

Total Burden Cost (capital/startup): $0.

Total Burden Costs (operation/maintenance): $0.

Dated: November 18, 2016.

Melissa Smith,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2016–28734 Filed 11–28–16; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–009]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by December 29, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at

Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0016, 1 item, 1 temporary item). Records related to the Forestry Incentive and Land Enhancement Programs, including annual performance reviews, correspondence, program development files, payment documents, appeals, and participant folders.

2. Department of Commerce, National Telecommunications and Information Administration (DAA–0417–2016–0001, 1 item, 1 temporary item). Strip chart records to include recordings of very low frequency radio waves for measuring natural phenomena.

3. Department of Defense, National Guard Bureau (DAA–0168–2016–0007, 4 items, 4 temporary items). Records relating to the administration of protocol including copies of personnel records and forms, military awards files, records pertaining to graphics and printing operations, and related program files.

4. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2016–0005, 4 items, 4 temporary items). Records related to office administration and personnel, including records of meetings, internal performance reviews, change of employment station records, and records pertaining to recovery of personnel from work-related trauma.

5. Department of State, Bureau of Diplomatic Security (DAA–0059–2016–0006, 4 items, 4 temporary items). Records of the Victims' Resource Advocacy Program including routine administrative files, training materials, and intake forms.

6. Central Intelligence Agency, Agency-wide (N1–263–12–2, 7 items, 7 temporary items). Records related to human resources, payroll administration, secrecy agreements, and intelligence collection and operations.

7. Central Intelligence Agency, Agency-wide (DAA–0263–2016–0004, 2 items, 2 temporary items). Records related to open source audio and video collected with minimal or no business value.

8. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2016–0001, 1 item, 1 temporary item). Routine employee safety activity records such as safety meeting minutes, fire extinguisher location logs, and safety visit documents.

9. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2016–0002, 2 items, 2 temporary items). Routine employee reports on agency facility safety concerns and safety suggestions.

10. National Archives and Records Administration, Agency-wide (DAA–0064–2016–0003, 3 items, 2 temporary items). Records related to special studies. Proposed for permanent retention are significant studies that change agency policies and procedures.

11. National Archives and Records Administration, Agency-wide (DAA–0064–2016–0005, 3 items, 2 temporary items). Records related to special projects. Proposed for permanent retention are significant projects that result in a change of agency policies and procedures, have a major impact on the archival or records management profession, or have historical significance relating to the agency mission.

12. National Archives and Records Administration, Agency-wide (DAA–0064–2016–0015, 1 item, 1 temporary item). Records related to committees not sponsored by the agency, including membership lists, briefing books, by-laws, meeting minutes, questionnaires, surveys, studies, publications, speeches, and reports.

13. National Archives and Records Administration, Federal Records Center Program (DAA–0064–2016–0016, 1 item, 1 temporary item). Records related to the records management services program.

14. National Archives and Records Administration, Office of the Chief Records Officer (DAA–0064–2016–0017, 1 item, 1 temporary item). Records related to Federal agency records management assistance projects, including memorandums of understanding, reports, customer satisfaction surveys, correspondence, and project documentation.

15. National Archives and Records Administration, Office of Human Capital (DAA–0064–2016–0007, 2 items, 2 temporary items). Records related to the accountability program, including reports, statistical studies, working papers, correspondence, subject files, training materials, and surveys.

16. National Archives and Records Administration, Office of Human Capital (DAA–0064–2016–0009, 3 items, 3 temporary items). Records related to workplace protection, including reports, correspondence, working papers, and training materials regarding domestic violence, sexual assault, and stalking.

17. National Archives and Records Administration, Office of Inspector General (DAA–0064–2016–0006, 5 items, 4 temporary items). Routine investigative case files; closed complaint, referral, and preliminary files; investigative training records; and related materials. Proposed for permanent retention are significant investigative case files.

18. National Archives and Records Administration, Research Services (DAA–0064–2016–0008, 3 items, 3 temporary items). Records related to pest management, including planning strategy documents, working papers, reports, responses, statistical studies, findings, and assessments.

19. Special Inspector General for Afghanistan Reconstruction, Agency-wide (DAA–0220–2016–0003, 11 items, 9 temporary items). Records of the Inspector General's office including peer review records, conference and event planning materials, and related materials. Proposed for permanent retention are special project reports and final lessons learned reports.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–28687 Filed 11–28–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–008]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: NARA proposes to request an extension from the Office of Management and Budget (OMB) of approval to use two information collections. The first is used by researchers who wish to do biomedical statistical research in archival records containing highly personal information. The second is prepared by organizations that want to make paper-to-paper copies of archival holdings with their personal copiers at the National Archives at the College Park facility. We invite you to comment on these proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before January 30, 2017.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (ID), Room 4400; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, fax them to 301–713–7409, or email them to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 or fax at 301–713–7409 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collections and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record. In this notice, NARA solicits comments concerning the following information collections:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095–0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title:* Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095–0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2016–28686 Filed 11–28–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Recordkeeping and Disclosure Requirements Associated With the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., As Amended by the Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952, and as Implemented by Regulation V, 12 CFR 1022, and by 12 CFR 717; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the submission for reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NCUA is soliciting comment on the reinstatement of the information collection described below.

DATES: Comments should be received on or before January 30, 2017 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–548–2279; or Email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0165.

Title: Recordkeeping and Disclosure Requirements Associated with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.,* as amended by the Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952, and as implemented by Regulation V, 12 CFR 1022, and by 12 CFR 717.

Abstract: The Fair Credit Reporting Act (FCRA), sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. FCRA has been revised numerous times since it took effect, notably by passage of the Consumer Credit Reporting Reform Act of 1996, the Gramm-Leach-Bliley Act of 1999, and the Fair and Accurate Credit Transactions Act of 2003 (FACTA). Historically, rulemaking authority for FCRA has been divided among the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), NCUA, the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) amended a number of consumer financial protection laws, including most provisions of FCRA. In addition to substantive amendments, the DFA transferred rulemaking authority for most provisions of FCRA to the Consumer Financial Protection Bureau (CFPB). Pursuant to the DFA and FCRA, as amended, CFPB promulgated Regulation V, 12 CFR 1022, to implement those provisions of FCRA for which CFPB has rulemaking authority.

Regulation V contains several requirements that impose information collection requirements: The negative information notice; risk-based pricing; the procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies; the duties upon notice of dispute from a consumer; the affiliate marketing opt-out notice; and the prescreened consumer reports opt-out notice.

The DFA did not transfer certain rulemaking authority under FCRA. Specifically, the DFA did not transfer to CFPB the authority to promulgate: The requirement to properly dispose of consumer information; the rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation; and the rules on the duties of card issuers regarding changes of address.

These provisions are promulgated in NCUA's Fair Credit Reporting regulation, 12 CFR 717, which applies to federal credit unions.

The collection of information pursuant to Parts 1022 and 717 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. To ease the compliance cost (particularly for small credit unions), model clauses and sample forms are appended to the regulations.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public records. NCUA requests that you send your comments on the information collection requirements to the locations listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our 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 such as through the use of automated collection techniques or other forms of information technology

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions; Individuals or Households.

Estimated Number of Respondents: Federal credit unions: 3,765; Consumer: 115,300.

Frequency of Response: Upon occurrence of triggering action.

Estimated Burden Hours per Response: Federal credit unions: 4.67; Consumer: 0.08.

Estimated Total Annual Burden Hours: 303,546 (Federal credit unions: 284,346; Consumer: 19,200).

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 22, 2016.

Dated: November 23, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–28659 Filed 11–28–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities; Proposed Collection; Comment Request; Management Official Interlocks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before January 30, 2017 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Suite 5067; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0152.

Title: Management Official Interlocks, 12 CFR part 711.

Abstract: The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (''Interlocks Act'') generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. The Interlocks Act exempts interlocking arrangements between credit unions and, therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions-banks and thrifts and their holdings. The collection of information under Part 711 is needed to provide evidence of compliance with the requirements of the Interlocks Act.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 2.

Estimated No. of Responses per Respondent: 1.

Estimated Annual Responses: 2.

Estimated Burden Hours per Response: 3.

Estimated Total Annual Burden Hours: 6.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 22, 2016.

Dated: November 23, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–28657 Filed 11–28–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 30–December 2, 2016, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, November 30, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

1:00 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–3:00 p.m.: Draft Final Rulemaking Package for Mitigation of Beyond-Design-Basis Events (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the subject rulemaking package.

3:15 p.m.–5:00 p.m.: Fukushima Recommendations Related to (1) Evaluation of Natural Hazards Other Than Seismic and Flooding, (2) Periodic Confirmation of Natural Hazards, and (3) Real-Time Radiation Monitoring (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the subject Fukushima Tier 2 recommendations.

5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Thursday, December 1, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

Friday, December 2, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

5:30 p.m.–6:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016 (81 FR 71543). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly

Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 21st day of November, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–28550 Filed 11–28–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186; NRC–2013–0090]

University of Missouri-Columbia Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R–103, held by the Curators of the University of Missouri (the licensee) for the continued operation of its University of Missouri-Columbia Research Reactor (MURR or the reactor). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the renewal of the license.

DATES: The EA and FONSI are available on November 29, 2016.

ADDRESSES: Please refer to Docket ID NRC–2013–0090 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0090. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Geoffrey A. Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewal of Facility Operating License No. R–103, held by the Curators of the University of Missouri, which would authorize continued operation of its reactor for 20 years from date of issuance, located in the University Research Park, Columbia, Boone County, Missouri. As required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC staff prepared an EA documenting its environmental review. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed renewed license is not required and is issuing a FONSI in accordance with 10 CFR 51.32.

II. Environmental Assessment

Facility Site and Environs

The MURR facility is located on 7.5 acres of land in the central portion of the 84-acre University Research Park in Boone County. Boone County is located in the central part of the state and consists of an area of approximately 683 square miles (1,769 square km) and is approximately 41 miles (66 km) in its greatest north-to-south length and 22 miles (35.4 km) in its greatest east-to-west width. The University Research Park is an extension of the University of Missouri-Columbia, main campus and is located approximately 1.6 kilometers (1 mile) southwest of the main campus. The MURR facility includes a five-story reactor containment building which is centrally located and integrated into a one-story laboratory building. Immediately surrounding the MURR facility are other research buildings and parking lots associated with the University Research Park. Facilities beyond the University Research Park include a golf course to the west; campus sports arenas and fields to the northeast, east, and south; and the University's main campus. The City of Columbia is to the north. There are few permanent residences nearby with only 225 persons living within 1 kilometer (0.6 miles) of the MURR facility. The nearest permanent residence is located approximately 760 meters (0.5 miles) north of the site. The nearest dormitories are located approximately 1 kilometer (0.6 miles) from the MURR facility. The MURR is a tank-type (pressure vessel) reactor where the tank is located in an open pool. The reactor is light water moderated and cooled. It is licensed to operate at a maximum thermal steady state power level of 10 megawatts (MWt). The reactor core is located in a pressure vessel within the lined reactor pool. The reactor pool is 3 meters (10 feet) in diameter and 9 meters (30 feet) deep. The reactor is fueled with highly-enriched uranium plate-type fuel contained in eight fuel elements. A detailed description of the reactor can be found in the MURR safety analysis report (SAR). There have been no major modifications to the MURR since issuance of Operating License Amendment No. 2 on July 9, 1974, which authorized the MURR to operate at its current power level. However, the facility has added several laboratories and hot cells over the intervening time period in order to conduct research activities. A complete description of these changes will be provided in the NRC staff's safety evaluation report (SER) accompanying the issuance of the renewed license.

Description of the Proposed Action

The proposed action would renew Facility Operating License No. R–103 for an additional 20 years from the date

of issuance of the renewal license. The proposed action is in accordance with the licensee's application dated August 31, 2006, as supplemented by letters dated January 15, January 29, May 18, July 2, July 16, August 31, September 3, September 30, October 29, and November 30, 2010; March 11 and September 8, 2011; January 6 and June 28, 2012; January 28, July 31, and October 1, 2015; and February 8, April 8, April 15, May 31, and July 25, 2016 (the renewal application). In accordance with 10 CFR 2.109, ''Effect of timely renewal application,'' the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the reactor to routinely provide training, research, and services to the research community and the commercial sector for a period of 20 years.

Environmental Impacts of the Proposed Action

Radiological Impacts

Gaseous radioactive effluents are discharged through a multi-stage filtration system to the facility ventilation exhaust stack during reactor operations. The stack height is 21 meters (70 feet) above grade level; however, the effective stack height is greater due to the stack exhaust volumetric flow rate of 864 cubic meters per minute (30,500 cubic feet per minute). Other parts of the MURR facility are maintained at a negative pressure with respect to the reactor exhaust system which helps ensure that any release pathways are through the facility ventilation exhaust stack that provides an elevated release point for dispersion of the effluent. The licensee indicated that the most significant radionuclide released from reactor operation into the gaseous effluent stream is Argon-41 (Ar-41), which accounts for greater than 99 percent of the radioactivity released. The licensee measures the quantity of Ar-41 released annually from the facility ventilation exhaust stack under normal reactor steady-state operating conditions and provides the results in their annual reports. The licensee also provided calculations, using the maximum annual Ar-41 radioactivity release allowed by Technical Specification (TS) 3.7, ''Radiation Monitoring Systems and Airborne Effluents,'' which results in a maximum potential dose to a member of the public of 0.0235 milliSieverts (mSv) (2.35 mrem), which occurs at the nearest residence: A location which is 760 meters (2493 feet) from the licensee's release point (elevated stack). The NRC staff performed independent calculations to verify that the licensee's calculated public dose from Ar-41 represented a conservative estimate. The NRC staff calculated a maximum public dose from Ar-41 of 0.0415 mSv (4.15 mrem).

A review of the licensee's annual reports for the 5 years of operation from 2010 through 2015 shows that Ar-41 constitutes the significant radioactive isotope released from the MURR facility. The maximum annual release of Ar-41 was approximately 78 percent of the TS 3.7 limit in 2013, and the average Ar-41 release was approximately 70 percent of the TS 3.7 limit over the period from 2010 through 2015.

The licensee also considered the radiological effect of nitrogen-16 (N-16), which is produced from neutron activation of oxygen-16 in the reactor primary cooling system and pool coolant water. N-16 decays with a very short half-life of 7 seconds. Because the primary cooling system is a closed system that is shielded or located in areas with restricted access to the MURR staff during reactor operation, radiation exposure from or release of N-16 are not concerns. The MURR has hold-up tanks in both the primary coolant demineralizer loop and the pool coolant system, which allows the majority of N-16 in these systems to decay. The hold-up tanks are located in an area designated as a high radiation area which has locked, restricted access. Therefore, most of the N-16 has been removed through decay prior to reaching the pool surface or in areas where the MURR staff requires access. Other radioactive gaseous effluents released, as reported in the licensee's annual reports were approximately 1 percent or less of the air effluent concentration limits set by 10 CFR part 20, appendix B, ''Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage,'' Table 2, ''Effluent Concentrations,'' Column 1, ''Air.''

Since the potential annual radiation dose resulting from the maximum effluent release from the normal operation of the MURR to a member of the public in the unrestricted area at the nearest residence is 2.35 mrem (0.0235 mSv) to 4.15 mrem (0.0415 mSv), the licensee demonstrates compliance with the dose limit of 100 mrem (1 mSv) set by 10 CFR 20.1301, ''Dose limits for individual members of the public.'' Additionally, this potential radiation dose also demonstrates compliance with the ''as low as is reasonably achievable'' (ALARA) air emissions dose constraint of 10 mrem (0.1 mSv) specified in 10 CFR 20.1101, ''Radiation protection programs,'' paragraph (d). The NRC staff reviewed the radiological dose calculations provided by the licensee, the assumptions used, and the results of several years of effluent releases from the licensee's annual reports, as well as toured the facility, and finds the results of the licensee's dose estimates to be reasonable.

The licensee directs all potentially radioactive liquid waste into a liquid waste retention system until the liquid waste can be assayed for radioactive content, and chemically treated, if necessary, for disposal by discharge to the sanitary sewer system. Discharge of any liquid waste to the sanitary sewer requires the use of the MURR procedures to ensure that the liquid discharge meets the requirements of 10 CFR 20.2003, ''Disposal by release into sanitary sewerage,'' prior to release into the sanitary sewer. A review of the licensee's disposal data from its annual reports over the years 2010 through 2015, indicates that tritium constitutes more than 90 percent of the total activity released to the sanitary sewer, and all radioactive liquid releases were well below 10 percent of the regulatory limits in 10 CFR part 20, appendix B.

The MURR Health Physics Group oversees the handling of solid low-level radioactive waste generated at the MURR facility. This waste consists mainly of contaminated items such as demineralizer resins, filters, plastic bags, gloves, absorbent material, and wipes, as well as reactor equipment or components that are no longer of use. The MURR Health Physics Group disposes of the waste by shipment to a low level waste broker, or directly to a waste processing site for final disposal, in accordance with all applicable regulations for transportation of radioactive materials.

The licensee transfers mixed waste, consisting of substances having both hazardous and radioactive materials, to the Missouri University Environmental Health and Safety Department for disposal. If the mixed waste contains only short-lived radioactive materials, it may be stored until the short-lived materials decay to background levels and is then disposed of as hazardous waste. Mixed waste with long-lived radioactive material is transferred to an authorized facility for disposal.

To comply with the Nuclear Waste Policy Act of 1982, the licensee has entered into a contract with the U.S. Department of Energy (DOE) that

provides that DOE retains title to the fuel utilized at the MURR and that DOE is obligated to take the fuel from the site for final disposition. Spent nuclear fuel is shipped regularly from the site to the DOE following a period of time, which allows for the decay of short-lived radioisotopes and lowers the temperature of the spent fuel, in accordance with the MURR procedures and the applicable regulations for transportation of radioactive materials. No changes during the license renewal period are expected in the procedures for shipment of spent fuel that would affect the environment.

The MURR is cooled by three coolant systems: Primary, pool, and secondary. Natural convection can be used to cool the reactor core up to a license limit power of 50 kilowatts thermal (kWt), and forced circulation is required for higher power levels up to the license limit of 10 MWt. Above 50 kWt, the reactor core is cooled by the primary cooling system which circulates pressurized primary coolant through the reactor pressure vessel and then through the primary coolant heat exchangers, which transfer the heat to the secondary cooling system. The reactor pool, which contains the reactor pressure vessel and other reactor systems, is cooled by the pool cooling system which circulates the flow of pool coolant through the pool coolant heat exchanger and transfers the heat to the secondary cooling system. The heat from the primary and pool coolant systems is transferred to the secondary coolant system which dissipates the heat to the atmosphere from a mechanical cooling tower. The temperature control of the primary and pool cooling systems is maintained by an automatic temperature control system which adjusts secondary coolant flow to support the desired heat transfer and coolant temperature. The primary coolant is monitored for fission product activity by the Fuel Element Failure Monitoring System, which provides a continuous indication of the primary coolant radioactivity to the control room operators. The Secondary Coolant Monitoring System continuously monitors the secondary coolant for radioactivity which could indicate a leak from the primary or pool coolant heat exchangers. Continuously monitoring both cooling systems for radioactivity helps to ensure that the potential for any radioactivity to leak into the secondary cooling system, and environment, are minimized. The licensee also conducts periodic tests of the coolant systems to further reduce the likelihood of secondary system contamination.

As described in Chapter 11 of the MURR SAR, personnel exposures are well within the limits set by 10 CFR 20.1201, ''Occupational dose limits for adults,'' and the ALARA dose criteria in 10 CFR 20.1101, paragraph (b). The MURR Health Physics Group tracks personnel exposures, which are usually less than 5.0 milliSieverts (500 millirem) per year. The MURR ALARA program requires the Health Physics Group to investigate any personnel exposure that exceed 0.3 milliSieverts (30 millirem) in a month, which is less than 1 percent of the annual limit of 50 milliSieverts (5,000 millirem) specified in 10 CFR 20.1201. Environmental dosimeters mounted in several locations in and around the MURR facility provide a quarterly measurement of total radiation exposures at those locations. These dosimeters typically measure annual doses of less than 0.3 milliSieverts (30 millirem), except in the area of the loading dock, where packages containing radioactive materials in transit may be stored for short periods of time. In this location, the environmental dosimeters measure annual doses typically less than 1.0 milliSievert (100 millirem). The proposed action does not authorize any changes in the design or operation of the facility that would alter these occupational dose levels. There is no significant increase in individual or cumulative occupational radiation exposure as a result of license renewal.

The licensee conducts an environmental monitoring program to record and track the radiological impact of the MURR operation on the surrounding unrestricted area. The program consists of soil and vegetation collected semi-annually from eight locations; water samples collected semi-annually from three locations; and quarterly radiation exposure measurements at 45 locations of varying distances and directions from the MURR facility and at two control locations away from any direct influence from the reactor. The MURR Health Physics Group administers the program and maintains the appropriate records. Based on a review of the licensee's annual reports over the years from 2010 through 2015, the survey program indicated that radioactivity and radiation levels at the monitoring locations were not significantly higher than those measured prior to the start of activities at the MURR facility. Year-to-year trends in radioactivity and radiation levels are consistent between monitoring locations. Also, no correlation exists between total annual reactor operation and annual radioactivity and radiation levels measured at the monitoring locations. Based on the NRC staff's review of data from the annual reports over the years from 2010 through 2015, the NRC staff concludes that operation of the MURR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are proposed as part of the license renewal.

Because occupational and public exposures are below regulatory limits, the NRC staff concludes that the proposed action would not have a significant radiological impact.

Accident scenarios are provided in the guidance in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' issued February 1996, and the results of the licensee's analysis was provided in Chapter 13 of the MURR SAR. The most significant radiological fission product release accident at a research reactor is considered as the maximum hypothetical accident (MHA), which for the MURR is the failure of a fueled experiment during irradiation. The MHA scenario involves the irradiation of a 5-gram low-enriched uranium target, for approximately 150 hours, producing approximately 150 Curies of Iodine-131 through Iodine-135, as well as other radioactive isotopes. The scenario assumes that 100 percent of the activity of the sample is released into the reactor pool water; 100 percent of the noble gases in the pool rise to the surface, and becomes airborne, and 0.1 percent of the radioiodine in the pool also becomes airborne via pool water evaporation. The containment ventilation system isolates on actuation of the pool surface radiation monitors, and the radiation workers evacuate the reactor containment within 5 minutes. The licensee conservatively calculated doses to facility personnel during evacuation and the maximum potential doses to members of the public at various locations around the MURR facility. The license estimated an occupational dose of 1,180 mrem (11.80 mSv), for a five minute (evacuation) duration, and 0.0112 mrem (0.00012 mSv) for the maximum exposed member of the public. The NRC staff performed independent calculations to verify that the licensee's calculated doses represented conservative estimates for the MHA. The NRC staff, using conservative assumptions, estimated a dose to a worker of 2,001 mrem (20.01 mSv) for a five minute duration, and 66 mrem (0.66 mSv) for the maximum exposed member of the public. The

details of these calculations are provided in the NRC staff's SER that the NRC staff is preparing to document its safety review of the application for a renewed license. The occupational radiation doses resulting from the postulated MHA would be well below the 10 CFR 20.1201 limit of 5,000 mrem (50 mSv). The maximum calculated radiation doses for members of the public resulting from the postulated MHA would be below the 10 CFR 20.1301 limit of 100 mrem (1 mSv).

Because the licensee has not requested any changes to the facility design or operating conditions as part of its application for license renewal, the proposed action will not significantly increase the probability or consequences of accidents and there will be no significant changes in the type or significant increase in the effluents that may be release off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. The systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. In addition, the NRC staff evaluated information contained in the licensee's renewal application, and data the licensee reported to the NRC for the last 5 years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures have been well within applicable regulatory limits.

Based on its evaluation, the NRC staff concludes that continued operation of the reactor would not have a significant radiological impact.

Non-Radiological Impacts

As discussed above, the MURR is cooled by three coolant systems: Primary, pool, and secondary. The MURR facility uses approximately 38 million gallons of water per year (or 72 gallons per minute), the majority of which is used to provide make-up water for the secondary system (50 gallons per minute). The source of this water is the University of Missouri Columbia raw water supply system, which draws water from 5 deep wells, and which can provide up to 4,700 gallons per minute. Therefore, the water usage needed to replenish the secondary coolant lost due to evaporation from the MURR facility cooling tower would not impact the University of Missouri Columbia raw water supply, which has excess capacity. Release of thermal effluents from the MURR cooling tower will not have a significant effect on the environment. Chemicals are used in the treatment of secondary coolant and liquid radioactive waste. Sulfuric acid is used to control the potential of Hydrogen (pH) of the secondary coolant, and other chemicals are added to control water hardness and microbiological growth. Chemical treatment of liquid radioactive waste is used to precipitate radionuclides for removal as solids, or to adjust the pH level for disposal. Other chemicals are routinely used in the performance of experiments, which are evaluated and controlled by procedure. Given that the proposed action does not involve any change in the operation of the reactor or change in the emissions or heat load dissipated to the environment, the proposed action would not have a significant impact on land use, visual resources, air quality, noise, non-radiological wastes, or terrestrial or aquatic resources. Additionally, because the MURR does not discharge cooling water directly to the environment, the proposed action would have no effect on surface waters. Furthermore, in preparation for replacement of the secondary coolant cooling towers in 2012, the licensee sampled the cooling tower sump sludge for radioactivity and found none. The MURR's continued use of 38 million gallons of groundwater per year from wells owned and maintained by the University of Missouri-Columbia represents a negligible portion of water compared to that used by the University as a whole. The proposed action would result in no groundwater conflicts, degradation of groundwater, or other significant impacts to groundwater resources.

Based on its evaluation, the NRC staff concludes that the proposed action would have no significant non-radiological impacts.

Other Applicable Environmental Laws

In addition to the National Environmental Policy Act, the NRC has responsibilities that are derived from other environmental laws, including the Endangered Species Act, Coastal Zone Management Act, National Historic Preservation Act, Fish and Wildlife Coordination Act, and the Executive Order 12898—Environmental Justice. The following is a brief discussion of impacts associated with these laws and other requirements.

1. Endangered Species Act (ESA)

The ESA was enacted to prevent further decline of endangered and threatened species and restore those species and their critical habitat. Section 7 of the ESA requires Federal agencies to consult with the U.S. Fish and Wildlife's (FWS) or National Marine Fisheries Service regarding actions that may affect listed species or designated critical habitats.

The NRC staff conducted a search of Federally listed species and critical habitats that have the potential to occur in the vicinity of the MURR using the FWS Environmental Conservation Online System (ECOS) Information for Planning and Conservation (IPaC) system. The IPaC system report identified four Federally endangered or threatened species that may occur or could potentially be affected by the proposed action (ADAMS Accession No. ML16190A040). However, none of these species are likely to occur near the MURR because the facility is located within the University Research Park, an 84-acre developed area used for research and academic purposes. The MURR was constructed in the 1960s and has remained in use since that time. University Research Park is bordered by a golf course, athletic fields, other academic and office buildings associated with the University of Missouri-Columbia, and residential properties. Accordingly, the area does not provide suitable habitat for any Federally listed species. Further, the IPaC report determined that no critical habitat is within the vicinity of the MURR. Accordingly, the NRC concludes that the proposed license renewal of the MURR would have no effect on Federally listed species or critical habitats. Federal agencies are not required to consult with the FWS if the agencies determine that an action will not affect listed species or critical habitats (ADAMS Accession No. ML16120A505). Thus, the ESA does not require consultation for the proposed the MURR license renewal, and the NRC considers its obligations under ESA Section 7 to be fulfilled for the proposed action.

2. Coastal Zone Management Act (CZMA)

The CZMA, in part, encourages States to preserve, protect, develop, and where possible, restore or enhance, resources. Applicants for Federal licenses to conduct an activity that affects any land or water use or natural resource of the coastal zone of a state must provide a certification in that the proposed activities complies with the State's approved coastal zone management program and will conduct activities consistent with that program.

The State of Missouri does not contain any coastal zones. Because the

MURR is not located within or near any managed coastal zones, the proposed action would not affect any coastal zones. Therefore, the NRC finds that the licensee does not need to provide a certification under the CZMA.

3. National Historic Preservation Act (NHPA)

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the Act, historic properties or resources are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The NRHP lists one historical site located on the University of Missouri campus. The site is the East Campus Neighborhood Historic District. The location of the East Campus Neighborhood Historic District is approximately 4 kilometers (2.4 miles) northeast of the MURR facility. The closest off-campus historical site is the Sanborn Field and Soil Erosion Plots located 2 kilometers (1.2 miles) northeast of the MURR facility. Given the distance between the MURR facility and the Sanborn Field and Soil Erosion Plots, continued operation of the MURR will not impact any historical sites. Based on this information, the NRC finds that the potential impacts of license renewal would have no adverse effect on historic and archaeological resources.

4. Fish and Wildlife Coordination Act

The FWCA requires Federal agencies that license water resource development projects to consult with the FWS (or NMFS, when applicable) and State wildlife resource agencies regarding the potential impacts of the project on fish and wildlife resources.

The licensee is not planning any water resource development projects, including any modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, no coordination with other agencies pursuant to the FWCA is required for the proposed action.

5. Executive Order 12898—Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629 (February 16, 1994), directs agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the MURR. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the MURR, and all are exposed to the same health and environmental effects generated from activities at the MURR.

Minority Populations in the Vicinity of the MURR—According to the 2010 Census, approximately 22 percent of the population (total of approximately 138,000 individuals) residing within a 10-mile radius of MURR identified themselves as a minority. The largest minority populations were Black or African American (approximately 15,000 persons or 11 percent) and Asian (approximately 4,600 persons or 3.3 percent). According to the 2010 Census, about 19 percent of the Boone County population identified themselves as minorities, with Black or African Americans and Asians comprising the largest minority populations (9.3 and 3.8 percent, respectively). According to the U.S. Census Bureau's 2015 American Community Survey 1-Year Estimates, the minority population of Boone County, as a percent of the total population, had increased to about 21 percent with Black or African Americans and Asians origin comprising the largest minority populations (9 and 4 percent, respectively).

Low-income Populations in the Vicinity of the MURR—According to the U.S. Census Bureau's 2010–2014 American Community Survey 5-Year Estimates, approximately 29,600 individuals (22.2 percent) residing within a 10-mile radius of the MURR were identified as living below the Federal poverty threshold. The 2014 Federal poverty threshold was $24,230 for a family of four.

According to the U.S. Census Bureau's 2015 American Community Survey 1-Year Estimates, the median household income for Missouri was $50,238, while 14.8 percent of the state population and 10.2 percent of families were found to be living below the Federal poverty threshold. Boone County had a slightly higher median household income average ($50,520) and a higher percentage of persons (18.5 percent) and lower percentage of families (6.9 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would consist of radiological effects; however, radiation doses from continued operations associated with this license renewal are expected to continue at current levels, and would be well below regulatory limits. Because the proposed action involves no construction or land disturbance, no additional visual or noise impacts are expected to result from the proposed action.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed action would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the MURR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required (sooner than if a renewed license were issued) and the environmental effects of decommission would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan, which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions associated with operations. However, as previously discussed in this EA, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the MURR.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 2 to Facility Operating License No. R–103 for the MURR dated July 9, 1974, which authorized the MURR to operate at a maximum steady-state power level of 10 MWt.

Agencies and Persons Consulted

In accordance with NRC policy, the staff consulted with the Missouri State Liaison Officer on October 28, 2016, regarding the environmental impact of the proposed action, explained the environmental reviews and forwarded a draft of this environmental assessment. On November 16, 2016, the Missouri State Liaison Officer indicated, by electronic mail, that the State understood the NRC review and had no comments regarding the proposed action (ADAMS Accession No. ML16321A511).

The NRC staff also consulted with the State of Missouri, Department of Natural Resources, State Historic Preservation Office (Missouri SHPO) pursuant to Section 106 of the National Historic Preservation Act by letter dated June 17, 2010 (ADAMS Accession No. ML101730044). The Missouri SHPO responded by letter dated July 2, 2010 (ADAMS Accession No. ML101950104). The Missouri SHPO informed the NRC that the MURR in Columbia is eligible for inclusion in the National Register of Historic Places. However, the SHPO stated that because the proposed license renewal would not involve any new construction, excavation, demolition or rehabilitation, the action should have no adverse effect.

III. Finding of No Significant Impact

The NRC is considering issuance of a renewed Facility Operating License No. R–103, held by the Curators of the University of Missouri for the continued operation of the MURR for an additional 20 years.

On the basis of the EA included in Section II of this notice and incorporated by reference in this finding, the NRC staff finds that the proposed action will not have a significant impact on the quality of the human environment. The NRC staff's evaluation considered information provided in the licensee's application, as supplemented, and the NRC staff's review of related environmental documents. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of these documents. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as described previously.

Document	ADAMS Accession No.
Application for License Renewal for the University of Missouri-Columbia Research Reactor as Per 10 CFR 2.109—Cover Letter, August 31, 2006.	ML062540114
Safety Analysis Report for the University of Missouri-Columbia Application for License Renewal, Volume 1 of 2—August 31, 2006 (redacted version).	ML092110573
Safety Analysis Report for the University of Missouri-Columbia Application for License Renewal, Chapters 10–18, Volume 2 of 2, August 31, 2006 (redacted version).	ML092110597
University of Missouri Research Reactor (MURR) Environmental Report for License Renewal, August 31, 2006	ML062540121
Transmittal of University of Missouri-Columbia Research Reactor's Responses to the NRC Request for Additional Information Regarding Renewal for Amendment Facility Operating License, January 15, 2010.	ML100220371
Written Communication as Specified by 10 CFR 50.4(b)(1) Regarding the Response to the University of Missouri at Columbia—Request for Additional Information RE: License Renewal Environmental Report, January 29, 2010.	ML100330073
University of Missouri-Columbia Research Reactor's Response to NRC RAI dated April 20, 2010, May 18, 2010	ML101440148
MO, Dept. of Natural Resources, Review of University of Missouri, Columbia Research Reactor, 1513 Research Park Drive is Eligible for Inclusion in the National Register of Historic Places and Determination of Proposed License Renewal have no adverse Effect, July 2, 2010.	ML101950104
University of Missouri, Columbia, Response to NRC Request for Additional Information, dated June 1, 2010, July 16, 2010 (redacted version).	ML12354A237
University of Missouri, Columbia, Licensee Response to NRC Request for Additional Information—Chapter 10, August 31, 2010 (redacted version).	ML120050315
University of Missouri, Columbia, Response to Request for Additional Information Regarding License Renewal, September 3, 2010.	ML102500533
University of Missouri, Columbia, Response to Request for Additional Information Regarding License Renewal, September 30, 2010.	ML12355A019
University of Missouri, Columbia Response to NRC Request for Additional Information 45-Day Response Questions, October 29, 2010 (redacted version).	ML12355A023
Written Communication as Specified by 10 CFR 50.4(b)(1) Regarding the Response to the University of Missouri at Columbia—Request for Additional Information RE: License Renewal, Safety Analysis Report, Complex Questions, dated May 6, 2010, October 29, 2010.	ML103060018
University of Missouri, Columbia—Response to NRC Request for Additional Information 45-Day Response Questions, (TAC No. ME1580) November 30, 2010 (redacted version).	ML12355A026
University of Missouri-Columbia Research Reactor Response to Request for Additional Information Regarding Renewal Request for Amendment Facility Operating License R–103, March 11, 2011.	ML110740249
University of Missouri-Columbia Research Reactor's Response to NRC Request for Additional Information Regarding Renewal Request for Amended Facility Operating License R–103, September 8, 2011.	ML11255A003
University of Missouri—Columbia, Written Communication as Specified by 10 CFR 50.4(b)(1) Regarding Responses to the University of Missouri at Columbia—Request for Additional Information RE: License Renewal, Safety Analysis Report, January 6, 2012.	ML12010A186
University of Missouri, Columbia—Licensee Response to NRC Request for Additional Information dated May 6, 2010 (Complex Questions) and June 1, 2012 (45-day Response Questions) RE: License Renewal, June 28, 2012 (redacted version).	ML12346A004
Written Communication as Specified by 10 CFR 50.4(b)(1) Regarding the Response to the University of Missouri at Columbia—Request for Additional Information Regarding the Renewal of Facility Operating License No. R–103 for the University of Missouri, January 28, 2015.	ML15034A474
University of Missouri-Columbia—Response to Request for Additional Information Regarding Renewal Request for Amended Facility Operating License, July 31, 2015.	ML15216A122

Document	ADAMS Accession No.
University of Missouri, Columbia—Responses to NRC Request for Additional Information, Dated April 17, 2015, Regarding Renewal Request for Amended Facility Operating License, October 1, 2015.	ML15275A314
University of Missouri-Columbia—Response to NRC Request for Additional Information dated December 18, 2015, Regarding Renewal Request for License No. R–103, February 8, 2016.	ML16041A221
University of Missouri at Columbia—Responses to NRC Request for Additional Information dated February 8, 2016, Regarding Renewal Request (Financial Review), April 8, 2016.	ML16103A536
University of Missouri-Columbia Research Reactor, Response to Request for Additional Information on License Renewal, April 15, 2016.	ML16110A164
University of Missouri-Columbia Research Reactor's Responses to the NRC Request for Additional Information dated October 28, 2015, Regarding Our Renewal Request for Amended Facility Operating License No. R–103, May 31, 2016.	ML16155A132
U.S. Fish and Wildlife Service, University of Missouri-Columbia Research Reactor Proposed License Renewal, IPaC Trust Resources Report, July 8, 2016.	ML16190A040
U.S. Fish and Wildlife Service, Endangered Species Consultations Frequently Asked Questions, July 15, 2013	ML16120A505
University of Missouri-Columbia Research Reactor's Responses to the NRC Request for Additional Information Regarding the Proposed Technical Specifications for License Renewal, July 25, 2016.	ML16209A236

Dated at Rockville, Maryland, this 18th day of November 2016.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–28711 Filed 11–28–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2015–123; MC2017–22 and CP2017–42; MC2017–23 and CP2017–43; MC2017–24 and CP2017–44 and MC2017–25 and CP2017–45]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 2, 2016 (Comment due date applies to all Docket Nos. listed above)

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
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2015–123; *Filing Title:* Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express & Priority Mail Contract 20; *Filing Acceptance Date:* November 22, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Katalin K. Clendenin; *Comments Due:* December 2, 2016.

2. *Docket No(s).:* MC2017–22 and CP2017–42; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* November 22, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Helen Fonda; *Comments Due:* December 2, 2016.

3. *Docket No(s).:* MC2017–23 and CP2017–43; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 35 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* November 22, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Helen Fonda; *Comments Due:* December 2, 2016.

4. *Docket No(s).:* MC2017–24 and CP2017–44; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 36 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* November

22, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Max E. Schnidman; *Comments Due:* December 2, 2016.

5. *Docket No(s).:* MC2017–25 and CP2017–45; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 37 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* November 22, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Max E. Schnidman; *Comments Due:* December 2, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–28662 Filed 11–28–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79373; File No. SR-Phlx-2016–116]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Allocation of Directed Complex Orders

November 22, 2016.

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 November 16, 2016, NASDAQ PHLX LLC (''Phlx'' or ''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the allocation of Directed Orders as it relates to Complex Orders.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet .com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend the allocation of Directed Orders at Rule 1014(g)(viii) to except Directed Complex Orders from receiving a participation guarantee. A Directed Order is any order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider (''OFP'').[4]

In May 2005 the Exchange adopted rules for Phlx XL that permit Exchange specialists, Streaming Quote Traders (''SQTs''),[5] and Remote Streaming Quote Traders (''RSQTs'')[6] to receive Directed Orders, and to provide a participation guarantee to specialists, SQTs and RSQTs that receive Directed Orders.[7] Pursuant to Phlx Rule 1080(l)(ii) a Directed Order will be automatically executed and allocated to those quotations and orders at the National Best Bid or Offer (''NBBO'') when the Exchange's disseminated price is at the NBBO at the time of receipt of the Directed Orders and the member or member organization is quoting at the Exchange's disseminated price.

At this time, the Exchange is excepting Directed Complex Orders from a Directed Orders allocation because the Exchange's system cannot prevent a participation allocation for Directed Complex Orders when the Exchange's disseminated best bid or offer is not at the NBBO when the Directed Complex Order is received. The Exchange may offer a participation allocation for Directed Complex Orders at a later date by filing a proposed rule change with the Commission, after it has a limitation in place to systematically enforce Rule 1080(l)(ii) with respect to Directed Complex Orders. With this proposal, Complex Orders may continue to be marked as Directed Orders, but these orders will not receive a participation allocation pursuant to Exchange Rule 1014(g)(viii). Instead, these Complex Orders will be allocated pursuant to Exchange Rule 1014(g)(vii).

Today, as noted above, a Directed Order is defined in 1080(1)(i)(A) as any order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an OFP. Pursuant to Exchange Rule 1080(l), OFPs must transmit Directed Orders to a particular specialist, SQT, or RSQT electronically. If the Exchange's disseminated best bid or offer is at the NBBO when the Directed Order is received, the Directed Order is automatically executed on Phlx XL and allocated to the orders and quotes represented in the Exchange's quotation. A Directed Specialist, SQT, or RSQT will receive a participation allocation pursuant to Exchange Rule 1014(g)(viii) if the Directed Specialist, SQT, or RSQT was quoting at the NBBO at the time that the Directed Order was received.[8] Otherwise, the automatic execution will be allocated to those quotations and orders at the NBBO pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1098.

[4] Phlx Rule 1080(1)(i)(A).

[5] An SQT is an 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 SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. An SQT may only trade in a market making capacity in classes of options in which the SQT is assigned. *See* Phlx Rule 1014(b)(ii)(A). A ROT 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. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS.

[6] An RSQT is an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. *See* Phlx Rule 1014(b)(ii)(B).

[7] *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005). *See also* Phlx Rule 1014(g)(viii) (setting forth the automatic trade allocation algorithm for Directed Orders).

[8] *See* Exchange Rule 1080(l)(ii).

Exchange Rule 1014(g)(vii).[9] Directed Orders can be sent not only on behalf of public customers but also on behalf of broker dealers. Directed Orders are limited to orders sent on an agency basis by an OFP and not on behalf of the sender's proprietary account. To qualify as a Directed Order, an order must be delivered to the Exchange electronically. Today, both simple and Complex Orders may be submitted to the Exchange as Directed Orders and receive an allocation.[10]

The Exchange's proposal would result in Directed Complex Orders not receiving a participation guarantee as a Directed Order pursuant to Exchange Rule 1014(g)(viii). Directed Simple Orders would continue to receive a participation guarantee pursuant to Rule 1014(g)(viii).

The Exchange believes that Directed Orders reward specialists, SQTs, and RSQTs for actively engaging in marketing activities and establishing relationships with Order Flow Providers (''OFPs'') that generate Directed Orders sent to the Exchange by such OFPs. The Exchange believes that continuing to provide a participation guarantee for simple orders which are directed, will continue to result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow. The Exchange also believes that no longer providing a participation guarantee when a Directed Complex Order executes will not adversely impact the market or the opportunity for such orders to execute. Directed Complex Orders will continue to be provided the same access to liquidity on the Exchange as today. The Exchange intends to discontinue the participation allocation prior to December 1, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to reward specialists, SQTs, and RSQTs transacting simple options on Phlx XL with a participation guarantee in trades involving Directed Orders to encourage the capture of order flow on the Exchange. With this proposal, the Exchange would not permit a participation guarantee for Directed Complex Orders which are submitted to the Exchange, nonetheless the Exchange believes continuing to provide a participation guarantee for simple orders to be directed will continue to result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow. Today, the system cannot prevent a participation allocation for Directed Complex Orders when the Exchange's disseminated best bid or offer is not at the NBBO when the Directed Order is received. The Exchange believes that it is consistent with the Act to not offer the participation allocation for the Directed Complex Orders without a system limitation in place that would prevent a Directed Specialist, SQT or RSQT from receiving a Directed Complex Order allocation pursuant to Exchange Rule 1014(g)(viii) unless the Directed Specialist, SQT or RSQT is quoting at the NBBO at the time the Directed Complex Order is received as required by Exchange Rule 1080(l)(ii). The Exchange intended the Directed Order allocation to reward members and member organizations that are quoting at the NBBO when a Directed Order is received. The Exchange believes that such a system limitation would need to be in place to ensure that the Exchange's Rules related to Directed Complex Order operate as intended. Since the Exchange does not have the system limitation in place today, it would not function as intended.

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. With this proposal, the Exchange would not provide a participation guarantee for Directed Complex Orders which are submitted to the Exchange. All Phlx members and member organizations would continue to receive a participation guarantee for simple orders directed to the Exchange but not receive a participation guarantee for Complex Orders that are directed.

B. 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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] 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 to allow the proposal to become operative prior to December 1, 2016.[16] As discussed above, Phlx Rule 1080(l)(ii) allows a Directed Specialist, SQT, or RSQT to receive a participation allocation pursuant to Phlx Rule 1014(g)(viii) if the Directed Specialist, SQT, or RSQT was quoting at the NBBO at the time the Directed Order was received. The Exchange notes that it intended the Directed Order allocation to reward members and member organizations that are quoting at the NBBO when a Directed Order is received. The Exchange states that, at this time, the Exchange is not able to systematically enforce the requirement in Phlx Rule 1080(l)(ii) that a Directed Specialist, SQT, or RSQT be quoting a the NBBO at the time a Directed Complex Order is received to receive a Directed Complex Order allocation pursuant to Rule 1014(g)(viii). The

[9] *See* Exchange Rule 1080(l)(iii).

[10] Today, Directed Complex Orders are eligible to receive a Directed Order allocation only if it is legging into the simple order book (*i.e.* the individual components of the Complex Order are trading against simple orders or quotes). Complex Orders which are stock-option orders are not eligible to leg into the simple order book and therefore not eligible to receive a Directed Order allocation. *See* Phlx Rule 1098(c)(i).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 19b–4(f)(6)(iii).

[16] The Exchange will provide prior notice of the change in the form of an Options Trader Alert.

Exchange believes that it is necessary to have the ability to systematically enforce the requirements of Phlx Rule 1080(l)(ii) with respect to Directed Complex Orders to assure that the Exchange's Directed Complex Order rules operate as intended. Accordingly, the Exchange requests a waiver of the 30-day operative delay to allow the Exchange to discontinue the participation allocation for Directed Complex Orders prior to December 1, 2016.[17] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will allow the Exchange to discontinue the participation allocation for Directed Complex Orders until the Exchange is able to systematically enforce the requirements of Phlx Rule 1080(l)(ii) with respect to Directed Complex Orders.[18] Accordingly, the Commission designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–116 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–2016–116. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–116 and should be submitted on or before December 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28632 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

[17] As noted above, the Exchange may seek to offer a participation allocation for Directed Complex Orders after the Exchange has the ability to systematically enforce the requirements of Phlx Rule 1080(l)(ii) with respect to Directed Complex Orders.

[18] The Commission also notes that the Exchange stated that if it intends to offer a participation allocation for Directed Complex Orders in the future it will file a proposed rule change with the Commission.

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79376; File No. SR–NYSEARCA–2016–147]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 5.1(c) Regarding the Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

November 22, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 10, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.1(c) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.1(c) (Listing of an Affiliate or Entity that Operates and/or Owns a Trading System or Facility of the Corporation) (''Rule 5.1(c)'') regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The proposed changes are based on Rule 497 of the Exchange's affiliate New York Stock Exchange LLC (''NYSE'') and Rule 497-Equities of the Exchange's affiliate NYSE MKT LLC (''NYSE MKT'') (together, ''Rule 497'').[4] The Exchange proposes to amend Rule 5.1(c) to be substantially similar to Rule 497, thereby expanding the Rule 5.1(c) requirements.

Rule 5.1(c) provides that if a ''security of an affiliate of the Corporation or any entity that operates and/or owns a trading system or facility of the Corporation'' is listed pursuant to the rules of NYSE Arca Equities, then NYSE Arca Equities shall: [5]

- File monthly reports with the Securities and Exchange Commission (''Commission'') regarding its monitoring of the issuer's compliance with listing standards and trading in the security;
- have an independent accounting firm conduct an annual review of compliance with listing standards and provide a copy of the review to the Commission; and
- notify any non-compliant issuer and provide the Commission with information regarding the non-compliance and plan of remediation.

Rule 497 sets forth similar reporting requirements regarding securities issued by the Exchange's ultimate parent, Intercontinental Exchange, Inc. (''ICE''), and its affiliates. However, Rule 497 goes further in its requirements than Rule 5.1(c) in several ways.

First, in its first sentence, Rule 5.1(c) states that securities ''of an affiliate of the Corporation or any entity that operates and/or owns a trading system or facility of the Corporation'' [6] are subject to its requirements. However, Rule 5.1(c) does not define what constitutes an ''affiliate of the Corporation.'' By contrast, Rule 497 provides the relevant criteria in its definition of ''ICE Affiliate'':

> ''ICE Affiliate'' means ICE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where ''control'' means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.[7]

A second, substantive difference between the rules is that, unlike Rule 5.1(c), Rule 497 applies not just to securities issued by ICE Affiliates, but also to any listed option on such securities, as set forth in the definition of ''Affiliate Security.'' [8] Also unlike Rule 5.1(c), Rule 497 has pre-listing requirements that must be met before any Affiliate Security can be listed, including pre-listing approval by the relevant Regulatory Oversight Committee (each, a ''ROC'') of the board of directors.[9] Finally, Rule 497 requires quarterly, not monthly reports, and both the quarterly and annual reports must be provided to the relevant ROC.[10]

The Exchange proposes to include the definitions of ''ICE Affiliate'' and ''Affiliate Security'' in revised Rule 5.1(c), adding them as a new sub-paragraph (a), together with a definition of ''NYSE Arca Equities, Inc.'' stating that it is a wholly owned subsidiary of ICE. A new sub-paragraph (b) would incorporate the Rule 497 pre-listing requirements. The existing reporting requirements would be included as sub-paragraphs (c)(1)–(c)(3), the text of which would be revised consistent with Rule 497.

As a result of such changes, under the proposed Rule 5.1(c), prior to listing any security issued by an ICE Affiliate or a new class of options on a security issued by an ICE Affiliate, Exchange regulatory staff would be required to make a finding that the security or option class satisfied the Exchange's rules for listing, and the Exchange's ROC would be required to approve such finding. Throughout the continued listing and trading of the Affiliate Security on the Exchange, NYSE Arca Equities would prepare quarterly reports and have annual reviews conducted by an independent accounting firm, providing copies of both reports to the Commission and the Exchange's ROC. Finally, if an Affiliate Security were not in compliance with listing standards, Exchange regulatory staff would notify the issuer, request a plan of compliance, and provide the Commission with information regarding the non-compliance and plan of compliance.

Rule 497 requires that the quarterly report describe the monitoring of the Affiliate Security's compliance with applicable listing standards, including the Affiliate Security's compliance with both the minimum share price requirement and the quantitative listing requirements. Because NYSE Arca Equities requirements differ from those of NYSE and NYSE MKT, proposed Rule 5.1(c)(1) would include ''bid price requirement'' in place of ''minimum share price requirement'' [11] and ''quantitative and qualitative maintenance requirements'' in place of ''quantitative listing requirements.'' [12] Proposed Rule 5.1(c) would also differ from Rule 497 in that it would refer to the Corporation as well as the Exchange.

Finally, the Exchange notes that the proposed Rule 5.1(c) would be consistent with Bats BZX Exchange, Inc. (''BZX'') Rule 14.3 regarding requirements for the listing of securities listed by BZX or any of its affiliates.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [14] in general, and Section 6(b)(5) [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

[4] NYSE Rule 497 and NYSE MKT Rule 497-Equities are substantially similar. *See* Securities Exchange Act Release Nos. 79130 (October 21, 2016), 81 FR 74847 (October 27, 2016) (SR–NYSE–2016–67) and 79132 (October 21, 2016), 81 FR 74851 (October 27, 2016) (SR–NYSEMKT–2016–94).

[5] Rule 5.1(c).

[6] *Id.*

[7] NYSE Rule 497(a)(1) and NYSE MKT Rule 497—Equities(a)(1). ICE is the Exchange's ultimate parent. Unlike Rule 5.1(c), under Rule 497 an entity that operates and/or owns a trading system or facility of the relevant exchange would not be an ICE Affiliate unless it meets the definition's control requirements.

[8] NYSE Rule 497(a)(2) and NYSE MKT Rule 497—Equities(a)(2).

[9] NYSE Rule 497(b) and NYSE MKT Rule 497—Equities(b).

[10] NYSE Rule 497(c)(1)–(2) and NYSE MKT Rule 497—Equities(c)(1)–(2).

[11] *See* NYSE Arca Equities Rule 5.5(b)(4) (Common Stock—Select Market Companies, Equity Securities and Similar Issues) (maintenance requirement of a share bid price of at least $3) and NYSE Arca Equities Rule 5.5(h)(4) (Common Stock—Development Stage Companies) (maintenance requirement of a share bid price of at least $1).

[12] The NYSE Arca Equities rules regarding maintenance requirements provide that the Exchange may consider qualitative factors in determining whether maintenance requirements have been met. *See* NYSE Arca Equities Rule 5.5(b).02; NYSE Arca Equities NYSE Arca Equities Rule 5.5(g)(1)(C) (Unit Investment Trusts (''UITs'')); Rule 5.5(g)(2)(a) (Investment Company Units); NYSE Arca Equities Rule 5.5(h).02 and NYSE Arca Equities Rule 5.5(l) (Other Reasons for Suspending or Delisting).

[13] *See* Securities Exchange Act Release No. 77639 (April 18, 2016), 81 FR 23768 (April 22, 2016) (SR–BatsBZX–2016–08).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

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.

Specifically, the Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest by requiring heightened oversight of the listing and trading on the Exchange of Affiliate Securities and related reporting to the Commission and the ROC. The proposed changes would help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of such securities. The proposed defined terms would add clarity regarding what entities would be considered to be an affiliate and what securities fall within the scope of the rule. Expanding Rule 5.1(c) to incorporate Exchange-listed options on any security issued by an ICE Affiliate and require pre-listing requirements would strengthen the rule's requirements. In addition, the proposed changes would enhance reporting requirements by requiring NYSE Arca Equities to provide copies of both the annual and quarterly reports to the Commission and the Exchange's ROC. For these reasons, the Exchange believes that the proposed amendments to Rule 5.1(c) would continue to eliminate any perception of a potential conflict of interest if an ICE Affiliate seeks to list a security on the Exchange.

The proposed changes will provide greater harmonization between NYSE Arca Equities, NYSE and NYSE MKT rules of similar purpose, resulting in more comparable and consistent information being provided to the Commission and ROCs. As such, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market 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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather provide market participants with additional specificity and transparency regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] 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 notes that the proposed rule change would amend Rule 5.1(c) to be substantially similar to Rule 497 of its affiliates NYSE and NYSE MKT, which would result in enhancing the Rule 5.1(c) requirements. The Exchange believes that the proposed rule change would provide market participants with additional specificity and transparency regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed changes to Rule 5.1(c) without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[20]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–147 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–147. 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

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–147, and should be submitted on or before December 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28635 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79379; File No. SR–NYSEArca–2016–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment No. 1, Amending the Co-location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

November 22, 2016.

I. Introduction

On August 16, 2016, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 (1) to provide additional information regarding access to various trading and execution services; connectivity to market data feeds and testing and certification feeds; connectivity to Third Party Systems; and connectivity to DTCC provided to Users using data center local area networks; and (2) to establish fees relating to a User's access to various trading and execution services; connectivity to market data feeds and testing and certification feeds; connectivity to DTCC; and other services. The proposed rule change was published for comment in the **Federal Register** on August 26, 2016.[3] The Commission received no comments in response to the proposed rule change.[4] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.[5]

On November 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this order to solicit comments on Amendment No. 1 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment No. 1, and on the issues presented by the proposal.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The proposed rule change seeks to amend the co-location services offered by the Exchange to (1) provide additional information regarding the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (2) establish fees relating to a User's[8] access to trading and execution services; connectivity to data feeds and to testing and certification feeds; connectivity to clearing; and other services.[9]

Background and Access to Exchange Systems

As discussed more fully in the Notice, a User can purchase access to the Liquidity Center Network (''LCN'') and/or internet protocol (''IP'') network in the data center through the purchase of a 1, 10, or 40 Gb LCN circuit, a 10 Gb LX Circuit, bundled network access, Partial Cabinet Solution bundle, or 1, 10 or 40 Gb IP network access.[10] The purchase of any of the LCN or IP network circuit options gives a User access[11] to the Exchange's trading and execution systems, connectivity to the Exchange's certification and testing feeds,[12] and the ability to connect to any NYSE Data Product.[13] More specifically, access to the Exchange's trading and execution system provides a User with access to the Exchange's ''customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement.'' [14] The Exchange seeks to add clarifying language in its proposed

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–78628 (August 22, 2016), 81 FR 59004 (''Notice'').

[4] The Commission notes that it did receive one comment letter on a related filing, NYSE–2016–45, which is equally relevant to this filing. *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 (''IEX Letter'').

On September 23, 2016, the NYSE submitted a response (''Response Letter'').

[5] *See* Securities Exchange Act Release No. 34–78967 (September 28, 2016), 81 FR 68480.

[6] Amendment No. 1 is discussed further *infra.* Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysearca-2016-89/nysearca201689-1.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC (''NYSE MKT'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE MKT, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[9] *See* Notice, *supra* note 3, 81 FR at 59004–59005.

[10] *See id.* at 59005.

[11] The purchase of access is subject to receiving authorization from the NYSE, NYSE MKT or NYSE Arca for the Included Data Products, as applicable. *See id.* at 59005 n.10.

[12] Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange systems. Testing feeds, which do not carry live production data, provide Users with an environment to conduct tests with the non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development. *See id.* at 59005. These feeds are only available over the IP network, however a User without an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See id.* at 59005 n.12.

[13] *See id.* at 59005.

[14] *See id.* at 59006.The Exchange represents that connectivity to the Exchange systems can be obtained without the purchase of access to the LCN or IP network. *See id.*

rule to reflect the services included with purchase of Exchange system access.[15]

Connectivity to Included Data Products

As discussed more fully below, the Exchange offers connectivity to three types of data products: Included Data Products, Premium NYSE Data Products, and Third Party Data Feeds.[16] As discussed more fully in the Notice, the Included Data Products include Consolidated Tape Association (''CTA'') disseminated data feeds and NMS data feeds.[17] The CTA disseminates consolidated real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[18] The NMS data feeds include Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.[19] To obtain connectivity to the Included Data Products, a User must enter into a contract with the data provider and pay any applicable fees.[20] Once the Exchange receives an authorization from the data feed provider, the Exchange will provide connectivity to the Included Data Product(s) through a User's LCN or IP network port.[21] The Exchange does not charge any additional fees for this connectivity ''because such access and connectivity is directly related to the purpose of co-location.'' [22] The Exchange proposes to add language to the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges (collectively ''Fee Schedules'') to specify that there are no additional fees for connectivity to Included Data Products.[23]

Connectivity to Premium NYSE Data Products

As part of its data product offerings, the Exchange now proposes to provide connectivity to Premium NYSE Data Products from the Exchange and its Affiliate SROs to Users over either the LCN and/or IP network ''because such access and connectivity is directly related to the purpose of co-location.'' [24] The proposed rule change seeks to amend the Fee Schedules to specify the connectivity fees for Premium NYSE Data Products.[25]

As discussed more fully in the Notice, the Premium NYSE Data Products are ''equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products.'' [26] These Integrated Feeds include ''depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errors), opening and closing imbalance data, security status updates (*e.g.,* trade corrections and trading halts) and stock summary messages. The stock summary messages display a market's opening price, high price, low price, closing price, and cumulative volume for a security. Only the Integrated Feeds offer all these components in sequence in one feed.'' [27] Additionally, the NYSE BQT data feed includes, among other things, certain data elements from six of the equity Included Data Products of the Exchange and Affiliated SROs in one data feed: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.[28]

As is the case with Included Data Products, a User of Premium NYSE Data Products must enter into a contract with the data provider for each feed and the provider would then authorize the Exchange to provide connectivity of the particular feed to that User's LCN or IP Network port.[29] The Exchange proposes to charge a User a monthly recurring fee per each Premium NYSE Data Product feed for the connectivity provided by the Exchange.[30]

Connectivity to Third Party Data Feeds

The Exchange's proposal further seeks to offer Third Party Data Feeds to Users and to charge a connectivity fee per feed as reflected on its Fee Schedules.[31] In the data center, the Exchange receives Third Party Data Feeds from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee.[32] With the exceptions of Global OTC and NYSE Global Index, Users connect to Third Party Data Feeds over the IP network.[33] In charging for this service, the Exchange notes that its practice is consistent with the monthly fee Nasdaq charges its co-location customers for connectivity to third party data.[34]

In order to connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed.[35] The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User over a User's port.[36] Users only receive, and are only charged for, the feed(s) which they have entered into contracts for.[37] Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed.[38] The

[15] *See id.*

[16] *See id.* Neither the NYSE Data Products or Third Party Data Feeds provide access or order entry to the Exchange's execution system. *See id.* Connectivity to the NYSE Data Products is available in three forms: A resilient feed, ''Feed A'', or ''Feed B.'' A resilient feed includes two copies of the same feed for redundancy purposes and Feed A and Feed B are identical feeds. A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. *See id.* at 59005; *see also id.* at 59005 n. 13.

[17] *See* Notice, *supra* note 3, 81 FR at 59006.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.; see also* Amendment No. 1, *supra* note 6.

[23] *See* Notice, *supra* note 3, 81 FR at 59006.

[24] *See id.; see also* Amendment No. 1, *supra* note 6.

[25] *See* Notice, *supra* note 3, 81 FR at 59006.

[26] *See id.* Examples include: (1) The NYSE Integrated Feed that includes, among other items, data from three of the equity Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances; and (2) the NYSE BQT data feed that includes, among other items, specific data elements from six of the equity Included Data Products: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO. *See id.* Additionally, with respect to the NYSE Amex and NYSE Arca options data, neither NYSE Amex nor NYSE Arca offer Premium Data Products because there are ''no options data products that integrate, or include data elements from, other option data products in the same manner that the NYSE, NYSE MKT and NYSE Arca Integrated Feeds integrate, or include data elements from, equity Included Data Products.'' *See id.*

[27] *See* Amendment No. 1, *supra* note 6.

[28] *See id.* None of the Included Data Products provide Users with data from the Exchange and Affiliate SROs in one feed. *See id.* Also, according to the Exchange, the Premium Data Products contain more data overall in comparison to the Included Data Products and potentially can be subject to greater technical specifications in order to receive the feed(s). *See* Notice, *supra* note 3, 81 FR at 59007. ''For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.'' *See id.* at 59007 n. 13.

[29] *See* Notice, *supra* note 3, 81 FR at 59007.

[30] *See id.*

[31] *See id.* at 59008.

[32] *See id.*

[33] *See id.*

[34] *See id.* The Exchange notes that Nasdaq charges monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX. *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.* There is one exception to this for the ICE feeds which include both market data and

Continued

Exchange proposes to charge a monthly recurring fee for connectivity to each Third Party Data Feed, however for SuperFeed and MSCI it proposes to charge different fees which vary based on the bandwidth requirements for the connection.[39] A User is free to receive all or some of the feeds included in the Fee Schedules.[40] Moreover, the Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees,[41] which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.[42] Finally, the Exchange permits third party markets or content providers that are also Users to connect to their own Third Party Data Feeds without a charge.[43] The Exchange represents that it does not charge Users that are third party markets or content providers for connectivity to their own feeds because such parties generally receive their own feeds for purposes of diagnostics and testing.[44]

Connectivity to Other Services

As part of its data center offerings, the Exchange also seeks to provide access and connectivity to Third Party Systems/content service providers, the DTCC[45] (collectively ''Service Providers''), third party certification and testing feeds,[46] and Virtual Control Circuits[47] (''VCCs'').[48] The proposed rule change seeks to amend the Fee Schedules to add new fees for connectivity to these Service Providers and third party certification and testing feeds and to specify that connectivity is dependent on a User meeting the necessary technical requirements, paying the applicable fees, and the Exchange receiving authorization to establish a connection for a User.[49] Similarly, the proposed rule change seeks to amend the Fee Schedules to add a new fee for connectivity for VCCs which will similarly require permission from the other User before the Exchange will establish the connection.[50] Accordingly, the Exchange proposes to amend its Fee Schedules to add recurring monthly connectivity fees for Service Providers and VCCs based upon the bandwidth requirements per system and/or VCC connection between two Users.[51] For third party certification and testing feeds, the Exchange proposes to revise its Fee Schedules to include a monthly recurring $100 fee per feed.[52]

For each service, a User must execute a contract with the respective Service Provider and/or third party certification and testing feed provider(s) pursuant to which a User pays each the associated fee(s) for their services.[53] Once the Exchange receives authorization from the Service Provider and/or third party certification and testing feed provider(s), the Exchange will enable a User to connect to the Service Provider and/or third party certification and testing feed(s) over the IP Network.[54] Similarly, with respect to VCCs, the Exchange will not establish a VCC connection over its IP Network until the other User confirms the VCC request.[55] Finally, the Exchange notes, that its execution system does not provide access to Service Provider systems, nor do the Service Provider systems provide access to the Exchange's execution system.[56]

As noted above, the Commission received one comment letter on a related filing which is equally applicable to this filing.[57] This commenter (1) requested clarification about the history of the fees and ''the increasing costs of maintaining the data center and providing co-location compared to any related fee revenue'' and (2) expressed a concern about whether ''there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services.'' [58] Specifically, the commenter noted that the NYSE states that the connectivity fees are used to defray the costs associated with providing co-location to Users, but, the commenter questions whether the fees to cover the increasing costs of providing co-location are applied in an equitable manner.[59] Moreover, with respect to alternatives, the commenter noted that broker-dealers face best execution obligations that are ''critically impacted by sub-millisecond differences in access to exchange systems and market data.'' [60] As a result, market participants face the quandary of whether to trade from outside the data center if other members are trading from inside.[61] Additionally, some broker-dealers trading for clients ''may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients.''[62] The commenter believes that this environment ''imposes a form of trading tax on all members by offering different methods of access to different members.'' [63] The commenter questions whether true alternatives are available for participants seeking to compete with firms paying for exchange co-location and data services and whether the Exchange's ability to set fees is truly constrained by market forces for a ''comparable product''.[64]

As discussed above, the Exchange submitted a response to the commenter on the related filing.[65] The Exchange in its Response Letter stated that historical information about the development of these product offerings is ''not required by the Act and is not relevant to [] the substance of the Proposal—which is, by definition, forward looking . . .'' [66] Additionally, the Response Letter noted that costs are not the only consideration in setting its prices, but rather the prices ''include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the

trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. *See id.*

[39] *See id.*

[40] *See id.*

[41] *See id.* at 59008–59009.

[42] *See id.*

[43] *See id.* at 59009.

[44] *See id.*

[45] ''Such connectivity to DTCC is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.'' *See id.* at 59009 n. 33.

[46] Certification feeds certify that a User conforms to any of the relevant content service providers' requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing feeds provide Users an environment in which to conduct system tests with non-live data. *See id.* at 59009.

[47] A VCC (previously called a ''peer to peer'' connection) is a two-way connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose. *See id.*

[48] *See id.* at 59007–59009.

[49] *See id.*

[50] *See id.* at 59009.

[51] *See id.* at 59007–59009.

[52] *See id.* at 59009.

[53] *See id.* at 59007–59009.

[54] *See id.* For Third Party Systems, once the Exchange receives the authorization from the respective third party it establishes a unicast connection between the User and the relevant third party over the IP network. *See id.* at 59007. For the DTCC, ''[t]he Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port.'' *See id.* at 59009.

[55] *See* Notice, *supra* note 5, 81 FR at 59009.

[56] *See id.* at 59008–59009.

[57] *See* IEX Letter, *supra* note 4.

[58] *See id.* at 1–2.

[59] *See id.*

[60] *See id.* at 2.

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See* Response Letter, *supra* note 4.

[66] *See id.* at 2.

services.'' [67] With respect to the commenter's concern about members needing additional information to assess the fixed costs of exchange membership, the Exchange responded that these are not fixed costs of ''Exchange members'' but instead costs to any User who voluntarily chooses to purchase such services based upon ''[t]he form and latency of access and connectivity that bests suits a User's needs . . .'' [68] Users do not require the Exchange's access or connectivity to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.[69]

In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that ''it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.'' [70] The Exchange further stated in response to the commenter's concern of a lack of true alternatives for a ''comparable product'', that the filing lists several alternative options for Users and a User can evaluate the ''relative benefits of those alternatives and choose whichever it deems most beneficial to it . . .'' [71]

Amendment No. 1

In Amendment No. 1, the Exchange offers additional justification for the proposed rule change.[72] In Amendment No. 1, the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products, (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the data center.[73] In the Amendment, the Exchange provided further detail on the benefits provided to Users through the Premium NYSE Data Products including ''depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errors), opening and closing imbalance data, security status updates (*e.g.,* trade corrections and trading halts) and stock summary messages.'' [74] The Exchange also clarified which costs are associated with providing Users with access and connectivity to the various services discussed in the filing, including the Premium NYSE Data Products.

III. Proceedings To Determine Whether To Disapprove SR–NYSEArca–2016–89 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [75] to determine whether the proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1. 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, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' [76]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [77] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [78]

As discussed above, the Exchange's proposal would, among other things, establish fees relating to a User's access to trading and execution services, connectivity to data feeds and to testing and certification feeds, connectivity to clearing, and other services. The Exchange believes that the proposed fees are consistent with Sections 6(b)(4), (5), and (8) of the Act because the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants.[79] The Exchange stated that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms.[80] Additionally, the Exchange believes that because there are alternatives for a User both in and outside of the data center if it believes the fees are too excessive, the fees are consistent with the Act.[81] Specifically, the Exchange noted that a User could terminate its co-location arrangement with the exchange ''and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location.'' [82] Additionally, ''[a]s alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [83] However, the Exchange also stated that the expectation of co-location was that normally Users would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange by being co-located.[84] Therefore, as the Exchange states in Amendment No. 1, both Included Data Products and Premium NYSE Data Products are ''directly related to the purpose of co-location.'' [85]

[67] *See id.*

[68] *See id.* at 4.

[69] *See id.*

[70] *See id.* at 5. The Exchange makes a further argument about the Exchange being a regulated co-location space whereas other unregulated co-location options are available. *See id.*

[71] *See id.* at 6. The Exchange noted that it is not addressing the commenter's statements about broker-dealers needing to purchase market data from the Exchange as that is outside the scope of this proposal. *See id.* at 5 n.13.

[72] *See* Amendment No. 1, *supra* note 6.

[73] *See id.*

[74] *See id.; see also supra* note 27 and accompanying text.

[75] 15 U.S.C. 78s(b)(2)(B).

[76] 15 U.S.C. 78f(b)(4).

[77] 15 U.S.C. 78f(b)(5).

[78] 15 U.S.C. 78f(b)(8).

[79] *See* Notice, *supra* note 3, 81 FR at 59010–59011.

[80] *See id.* at 59011.

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See* Amendment No. 1, *supra* note 6.

The commenter suggests that Users do not in fact have alternatives to paying the connectivity fee to obtain Premium NYSE Data Products.[86] If these products are integral to co-located Users for trading on the Exchange, the Commission questions whether obtaining the information contained in these products from another source is, in fact, a viable alternative given the importance of receiving such information in a timely manner. The Commission is concerned that the Exchange has not supported its argument that there are viable alternatives for Users inside the data center in lieu of obtaining such information from the Exchange. The Commission seeks comment on whether Users do have viable alternatives to paying the Exchange a connectivity fee for the Premium NYSE Data Products.

Additionally, the Exchange states that both Included Data Products and Premium NYSE Data Products are ''directly related to the purpose of co-location.'' The Commission is concerned that the Exchange has not made clear why including the cost of connectivity to the Included Data Products in the purchase of a LCN or IP network connection and charging an additional fee to obtain the Premium NYSE Data Products is an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. The Commission is concerned that the Exchange has not identified a distinction between the provision of connectivity to Included Data Products and the provision of connectivity to Premium NYSE Data Products, as opposed to a distinction between the utility of the Included Data Products and Premium NYSE Data Products to Users, which the Exchange has demonstrated, even though these are all NYSE proprietary data products. Therefore, the Commission is concerned that the Exchange has not identified a reasonable basis for charging Users a separate connectivity fee for the Premium NYSE Data Products while including connectivity in the purchase price for a LCN/IP network connection. The Exchange stated in its filing that both are ''directly related to the purpose of co-location'' but it has not clearly justified why this permits including the connectivity fee for Included Data Products as part of the LCN or IP Network connection, even for those Users that do not use the Included Data Products, but not including the connectivity fee for the Premium NYSE Data Products as well. Similarly, the Exchange justifies the costs associated with providing these feeds by stating ''[i]n order to offer connectivity to the Premium NYSE Data Products, the Exchange must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the connectivity, including by ensuring that the network infrastructure has the necessary bandwidth for the Premium NYSE Data Products and responding to any production issues.'' [87] The Commission does not believe the Exchange has clearly explained why the same rationale would not apply to the Included Data Products. The Exchange has sought to justify this on the basis that the Premium NYSE Data Products are similar to any other service offered by the Exchange such as connectivity to Third Party Systems and DTCC.[88] The Commission however is concerned that these Premium NYSE Data Products are similar to the Included Data Products and therefore should not include different fee structures as they are the same offering by the Exchange within the contemplated purpose of co-location. The Commission seeks comment on whether charging fees for connectivity to Included Data Products and Premium NYSE Data Products in a different manner is consistent with Section 6(b)(4) of the Act.

Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(4), (5), or (8) [89] or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[90] any request for an opportunity to make an oral presentation.[91]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment No. 1, should be approved or disapproved by December 20, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 3, 2017. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Amendment No. 1, as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(4), (5) and (8),[92] or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change.

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–NYSEArca–2016–89 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 No. SR–NYSEArca–2016–89. 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

[86] *See* IEX Letter, *supra* note 4.

[87] *See* Amendment No. 1, *supra* note 6.

[88] *See id.*

[89] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[90] 17 CFR 240.19b–4.

[91] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to 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).

[92] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

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 No. SR–NYSEArca–2016–89, and should be submitted by December 20, 2016. Rebuttal comments should be submitted by January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79374; File No. SR–NYSEMKT–2016–106]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 901NY

November 22, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 10, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 901NY to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the NYSE Amex Options marketplace. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Options Rule 901NY (Trading Sessions) to permit the Chief Executive Officer (''CEO'') of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange.

The Exchange believes the proposed rule change would make Rule 901NY more reflective of the organizational structure of the Exchange. At the same time, the proposed rule changes would ensure that the Board of Directors of the Exchange continues to have the authority to take action it deems necessary or appropriate in particular situations.

The first paragraph of Rule 901NY provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 901NY notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of Rule 901NY to provide that, except as may be otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part Exchange Rule 51(a)—Equities as well as on New York Stock Exchange LLC (''NYSE LLC'') Rule 51(a).[4]

The Exchange proposes to add new paragraphs (c), (d), and (e) to Rule 901NY. These proposed changes are based on Rule 51(b)–(d)—Equities and NYSE Rule 51(b) and (c). New paragraph (c) would provide that, except as may be otherwise determined by the Board of Directors, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange's disaster recovery facility.[5]

[93] 17 CFR 200.30–3(a)(57).

[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. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). NYSE LLC is an affiliate of the Exchange. *See* Securities Exchange Act Release No. 45433 (February 12, 2002), 67 FR 7441 (February 19, 2002) (SR–NYSE–2001–55). The Exchange notes that its affiliate NYSE Arca, Inc. is submitting substantially the same proposed rule change for NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1. *See* SR–NYSEArca–2016–148.

[5] As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. *See* 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continutity [sic] and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-

Continued

New paragraph (d) would provide that the CEO or his or her designee shall take any of the actions described in new paragraph (c) only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as:

- Actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange,
- a request by a governmental agency or official, or
- a period of mourning or recognition for a person or event.

New paragraph (e) would require that the CEO or his or her designee notify the Board of Directors of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.[6]

The Exchange proposes that commentary .01 to Rule 901NY be amended by deleting ''under unusual conditions'' and a reference to the Board's designee, and by adding a reference to the authority of the CEO or his or her designee under new subparagraph (c).

Finally, the Exchange proposes to change the name of Rule 901NY from ''Trading Sessions'' to ''Hours of Business,'' which would make it consistent with Rule 51—Equities.

Currently, Rule 901NY requires Board action if extraordinary circumstances arise. However, the Board of Directors may not be able to convene and act quickly, thereby delaying any potential response. Pursuant to the operating agreement of the Exchange, a majority of the members of the Board of Directors must be Independent Directors.[7] Therefore, as a practical matter, they are unlikely to be at or near the Exchange if extraordinary circumstances arise, making it harder to convene quickly. Further, if communication systems are severely compromised in an emergency, the Board of Directors may not be able to convene at all.[8]

Current Rule 901NY partially addresses this concern by allowing the Board of Directors to name designees. However, use of a designee requires that the Board make the delegation before any unusual conditions arise. Further, Rule 901NY does not set any limits on when designees may act under the rule, unlike proposed paragraphs (c) and (d). Accordingly, the Exchange proposes to delete the references to a Board designee in the first paragraph of Rule 901NY and commentary .01. Such proposed deletions would make Rule 901NY consistent with Rule 51(a)—Equities, NYSE Rule 51(a) and NYSE Arca Equities Rule 7.1, none of which contemplate the board of directors appointing a designee to set the hours for business.

The Exchange believes designating by rule that the CEO of the Exchange or his or her designee may take certain actions in extraordinary circumstances would make Rule 901NY more reflective of the organizational structure of the Exchange. As described above, the CEO or his or her designees would be able to take such action only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The proposed amendments would ensure that the Board of Directors continues to have the authority to take action it deems necessary or appropriate in particular situations. In addition, as proposed, the amended rule would ensure that the Board of Directors would remain informed, by requiring the CEO to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

The proposed changes would have the additional benefit of bringing Rule 901NY into greater conformity with Rule 51—Equities, as well as NYSE Rule 51.[9]

The Exchange notes that the trading rules of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., and Bats EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest. The lists of special circumstances set out in such trading rules are substantially similar to those in Rule 51—Equities and NYSE Rule 51.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, because 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because it would make Rule 901NY more reflective of the organizational structure of the Exchange. In this manner, it would strengthen the ability of the Exchange to respond appropriately and in a timely fashion to

hour resumption of critical SCI systems following a wide-scale disruption).

[6] For example, the Exchange may close on a national day of mourning for a former president of the United States.

[7] *See* Tenth Amended and Restated Operating Agreement of NYSE MKT LLC, Article II, Sec. 2.03(a)(i). ''Independent Directors'' are directors that are U.S. persons that satisfy the independence requirements of the Exchange. *Id.*

[8] The presence of a majority of directors then in office is necessary to constitute a quorum. *See* Tenth Amended and Restated Operating Agreement of NYSE MKT LLC, Article II, Sec. 2.03(d).

[9] Rule 51(a)—Equities and NYSE Rule 51(a) do not state that the CEO can name a designee. However, pursuant to Rule 1—Equities and NYSE Rule 1, the CEO of the relevant exchange may designate one or more qualified employees to act in his or her place in the event that the CEO is not available. *See* Rule 1—Equities and NYSE Rule 1. *See also* Securities Exchange Act Release No. 61810 (March 31, 2010), 75 FR 17816 (April 7, 2010) (SR–NYSE–2010–26).

[10] *See* Bats BZX Exchange, Inc. Rule 11.1(c); Bats BYX Exchange, Inc. Rule 11.1(c); Bats EDGX Exchange, Inc. Rule 11.1(c); and Bats EDGA Exchange, Inc. Rule 11.1(c).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

extraordinary circumstances, even if the Board of Directors is unable to convene. However, unlike present Rule 901NY, which puts no limits on when the Board's designees may act, the proposed amended Rule 901NY would ensure that the CEO or his or her designee would be able to take action only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

In addition, the Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would ensure that the Board of Directors continues to have the authority to take action it deems necessary or appropriate in particular situations. In addition, as proposed, the amended rule would ensure that the Board of Directors would remain informed, by requiring the CEO to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] 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 states that waiver of the operative delay would immediately strengthen the ability of the Exchange to respond appropriately and in a timely fashion to extraordinary circumstances. The Exchange further states that waiving the 30-day operative delay would not affect the authority of the Board of Directors to take action it deems necessary or appropriate in particular situations. Moreover, the Exchange states that waiver of the 30-day operative delay would allow the Exchange to align its Rule 901NY and its Rule 51(a)—Equities without delay. The Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–106 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–NYSEMKT–2016–106. 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–NYSEMKT–2016–106, and should be submitted on or before December 20, 2016.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28633 Filed 11–28–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79381; File No. SR–BatsBZX–2016–48]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 Thereto, To List and Trade Shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF of the iShares U.S. ETF Trust Pursuant to BZX Rule 14.11(c)(4)

November 22, 2016.

On August 9, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF (each a ''Fund,'' and together the ''Funds'') pursuant to BZX Rule 14.11(c)(4). Notice of the proposed rule change was published in the **Federal Register** on August 30, 2016.[3] On October 6, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] On October 13, 2016, 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] No comments have been received regarding the proposed rule change. On October 26, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

I. The Exchange's Description of its Proposal[7]

The Exchange proposes to list and trade shares (the ''Shares'') of the Funds under BZX Rule 14.11(c)(4), which governs the listing and trading of Index Fund Shares based on fixed income securities indexes. The Shares will be offered by the Trust, which is a Delaware statutory trust and is registered with the Commission, as an open-end investment company.[8]

BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Funds.[9] 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 Funds seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the S&P AMT-Free Municipal Series Dec 2023 Index (the ''2023 Index'') and Municipal Series Dec 2024 Index (the ''2024 Index'' and, together with the 2023 Index, the ''Indices''), respectively. The Exchange submitted the proposed rule change because the Shares of the Funds meet all of the ''generic'' listing requirements of BZX Rule 14.11(c)(4) applicable to the listing of index fund shares based on fixed income securities indexes except for those set forth in BZX Rule 14.11(c)(4)(B)(i)(b). Specifically, for the iShares iBonds Dec 2023 Term Muni Bond ETF, components that comprised only 5.83% of the weight of the 2023 Index have a minimum original principal amount outstanding of $100 million or more. Further, for iShares iBonds Dec 2024 Term Muni Bond ETF, only 5.72% of the weight of the 2024 Index have a minimum original principal amount outstanding of $100 million or more. In contrast, BZX Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

A. iShares iBonds Dec 2023 Term Muni Bond ETF

1. The ''2023 Index''

The 2023 Index measures the performance of the non-callable investment-grade, tax-exempt U.S. municipal bonds with specific annual maturities (''Municipal Securities''). As of July 18, 2016, there were 4,612 issues in the 2023 Index. 73.56% of the weight of the 2023 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total face amount outstanding of issues in the 2023 Index was approximately $38.5 billion, the market value was $46.4 billion, and the average dollar amount outstanding of issues in the 2023 Index was approximately $8.3 million. Further, the most heavily weighted component represented 1.61% of the weight of the 2023 Index, and the five most heavily weighted components represented 3.66% of the weight of the 2023 Index.[10] 48% of the 2023 Index

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78666 (Aug. 24, 2016), 81 FR 59700 (''Notice'').

[4] In Amendment No. 1, the Exchange: (1) Clarified that each Fund's policy to invest at least 80% of its net assets in components of its underlying index is a continued listing requirement; (2) represented that at least 90% of the Funds' net assets that are invested in listed derivatives will be invested in instruments that trade in markets that are members or affiliates of members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange; (3) provided additional detail regarding the short-term instruments that the Funds may hold; (4) stated that price information for exchange-listed options held by the Funds will be available from the Options Price Reporting Authority; and (5) made various other technical changes. The amendment to the proposed rule change is available at: *https://www.sec.gov/comments/sr-batsbzx-2016-48/batsbzx201648.shtml*.

[5] To allow sufficient time to consider the proposed rule change, the Commission designated November 28, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See* Securities Exchange Act Release No. 79092, 81 FR 72141 (Oct. 19, 2016).

[6] In Amendment No. 2, the Exchange clarified that representations regarding adherence to the continued listing requirements and conditions under which the Exchange would delist the Shares apply to both Funds. The amendment to the proposed rule change is available at: *https://www.sec.gov/comments/sr-batsbzx-2016-48/batsbzx201648.shtml*.

[7] Additional information regarding the Fund, the Shares, and the Trust (as defined herein) can be found in the Notice, Amendments No. 1 and 2, and the Registration Statement, as applicable. *See* Notice, *supra* note 3, and Registration Statement, *infra* note 8.

[8] The Trust has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission. *See* Registration Statement on Form N–1A for the Trust, dated October 29, 2015 (File Nos. 333–123257 and 811–10325). The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). *See* Investment Company Act Release No. 28021 (Oct. 24, 2007) (File No. 812–13426).

[9] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[10] BZX Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

weight consisted of issues with a rating of AA/Aa2 or higher.

To be included in the 2023 Index, a bond must have an investment grade rating and must have an outstanding par value of at least $2 million. The bonds included in the 2023 Index have a maturity range of January 1, 2023, to December 1, 2023. The following types of bonds are excluded from the 2023 Index: Bonds subject to the alternative minimum tax, bonds with early redemption dates (callable provisions), bonds with sinking fund provisions, commercial paper, conduit bonds where the obligor is a for-profit institution, derivative securities, non-rated bonds (except pre-refunded/escrowed to maturity bonds), notes, taxable municipals, tobacco bonds, and variable rate debt (except for known step-up/down coupon schedule bonds).

The 2023 Index is calculated using a market value weighting methodology and its composition is rebalanced monthly. The 2023 Index value is calculated and disseminated at least once daily. The components of the 2023 Index and their percentage weighting will be available from major market data vendors.

2. The Fund's Holdings

The Fund will generally invest at least 90% of its assets in the component securities of the Fund's benchmark index, except during the last months of the Fund's operations.[11] From time to time, however, when conditions warrant, the Fund may invest at least 80% of its assets in the component securities of the Fund's benchmark index. According to the Exchange, the Fund will hold the following types of Municipal Securities: General obligation bonds, limited obligation bonds (or revenue bonds), municipal notes, municipal commercial paper, tender option bonds, variable rate demand obligations (''VRDOs''), municipal lease obligations, stripped securities, structured securities, and zero coupon securities.

Under normal circumstances, the Fund may also to a limited extent (less than 20% of the Fund's net assets) invest in the following: Certain listed derivatives;[12] repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''); short-term instruments (''Short-Term Instruments''),[13] which include exchange traded and non-exchange traded investment companies that invest in money market instruments.

The portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.iShares.com*.

B. iShares iBonds Dec 2024 Term Muni Bond ETF

1. The 2024 Index

The 2024 Index measures the performance of Municipal Securities. As of July 18, 2016, there were 3,624 issues in the 2024 Index. 72.27% of the weight of the 2024 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total face amount outstanding of issues in the 2024 Index was approximately $29.9 billion, the market value was $36.4 billion, and the average dollar amount outstanding of issues in the 2024 Index was approximately $8.3 million. Further, the most heavily weighted component represented 0.72% of the weight of the 2024 Index, and the five most heavily weighted components represented 2.74% of the weight of the 2024 Index.[14] 47.71% of the 2024 Index weight consisted of issues with a rating of AA/Aa2 or higher.

To be included in the 2024 Index, a bond must have an investment grade rating and must have an outstanding par value of at least $2 million. The bonds in the 2024 Index have a maturity range of January 1, 2024, to December 1, 2024. The following types of bonds are excluded from the 2024 Index: Bonds subject to the alternative minimum tax, bonds with early redemption dates (callable provisions), bonds with sinking fund provisions, commercial paper, conduit bonds where the obligor is a for-profit institution, derivative securities, non-rated bonds (except pre-refunded/escrowed to maturity bonds), notes, taxable municipals, tobacco bonds, and variable rate debt (except for known step-up/down coupon schedule bonds).

The 2024 Index is calculated using a market value weighting methodology and its composition is rebalanced monthly. The 2024 Index value is calculated and disseminated at least once daily. The components of the 2024 Index and their percentage weighting will be available from major market data vendors.

2. The Fund's Holdings

The Fund will generally invest at least 90% of its assets in the component securities of the Fund's benchmark index, except during the last months of the Fund's operations.[15] From time to time, however, when conditions warrant, the Fund may invest at least 80% of its assets in the component securities of the Fund's benchmark index. According to the Exchange, the Fund will hold the following types of Municipal Securities: General obligation bonds, limited obligation bonds (or revenue bonds), municipal notes, municipal commercial paper, tender option bonds, VRDOs, municipal lease obligations, stripped securities, structured securities, and zero coupon securities.

Under normal circumstances, the Fund may also to a limited extent (less than 20% of the Fund's net assets) invest in the following: Certain listed derivatives;[16] Repurchase Agreements; and Short-Term Instruments.[17]

The portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.iShares.com*.

II. Discussion and Commission's 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.[18] In

[11] In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents.

[12] Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized.

[13] Short-Term Instruments include money market instruments. The Funds will invest only in the following types of money market instruments: (1) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (2) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (3) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (4) commercial paper, including asset-backed commercial paper; (5) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (6) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Funds will be rated investment grade.

[14] *See supra* note 10.

[15] In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents.

[16] *See supra* note 12.

[17] *See supra* note 13.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be 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 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,[20] which sets forth Congress's 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 via the CTA high speed line.[21] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[22] Additionally, daily trading volume information for the Shares will be available in the financial section of newspapers, through subscription services, as well as through other electronic services, including major public Web sites.[23] Further, the Intraday Indicative Values for the Shares, as defined in BZX Rule 14.11(c)(6)(A), 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, which are between 9:30 a.m. and 4:00 p.m. Eastern Time.[24]

On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Funds that formed the basis for each Fund's calculation of NAV at the end of the previous business day.[25] The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio.[26] The Web site and information will be publicly available at no charge.[27] Price information regarding Municipal Securities and non-exchange traded assets is available from third party pricing services and major market data vendors.[28] For exchange-traded assets, such intraday information is available directly from the applicable listing exchange.[29] In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority.[30]

The Commission 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 Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the disclosed portfolio will be made available to all market participants at the same time.[31] Further, trading in the Shares will be subject to BZX Rules 11.18 and 14.11(c)(1)(B)(iv), which set forth circumstances under which trading in Shares of the Fund may be halted.[32] 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 daily disclosed portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[33]

Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority, as defined in BZX Rule 14.11(c)(1)(C) or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.[34] The Exchange represents that it prohibits the distribution of material, non-public information by its employees.[35] The Exchange also states that the index provider is not a broker-dealer but is affiliated with a broker-dealer, and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Indices.[36] The index provider has also implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indices.[37]

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: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Exchange states that its surveillance 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.[38] Trading of the

impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] *See* Amendment No. 1, *supra* note 4, at 28.

[22] *See id.* at 36–37.

[23] *See id.* at 27.

[24] The Exchange states that that several major market data vendors display and/or make widely available IIVs published via the CTA or other data feeds. *See id.* at 28, n.44.

[25] *See id.* at 27.

[26] *See id.*

[27] *See id.*

[28] *See id.* at 28–29.

[29] *See id.* at 29.

[30] *See id.*

[31] *See id.*

[32] *See id.* at 29, 30.

[33] *See id.* at 29–30.

[34] *See* BZX Rule 14.11(c)(4)(C)(iii).

[35] *See* Amendment No. 1, *supra* note 4, at 31.

[36] *See id.* at 34.

[37] *See id.*

[38] *See id.* at 30.

Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares.[39]

The Exchange represents that all statements and representations made in the Exchange's filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange.[40] The Exchange also states that the issuer has represented that it will advise the Exchange of any failure by either Fund to comply with the continued listing requirements and that, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.[41] If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.[42]

The Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments via the 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.[43] 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 (''TRACE'').[44] FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.[45]

The Commission notes that the Fund and the Shares must comply with the requirements of BZX Rule 14.11(c)(4) to be initially and continuously listed and traded on the Exchange. The Exchange represents that it 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. In support of this proposal, the Exchange, in addition to the representations as noted above, has made the following representations:

- For initial and/or continued listing, the Funds and the Trust must be in compliance with Rule 10A–3 under the Act.[46]
- A minimum of 50,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.[47]

This approval order is based on all of the Exchange's representations, including those set forth above and in the proposed rule change, as modified by Amendments No. 1 and No. 2. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Solicitation of Comments on Amendments No. 1 and No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 1 and No. 2 are consistent with the Exchange 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–BatsBZX–2016–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–48 and should be submitted on or before December 20, 2016.

IV. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 1 and No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposed rule change by, among other things, (1) clarifying that each Fund's policy to invest at least 80% of its net assets in components of its underlying index is a continued listing requirement; and (2) representing that at least 90% of the Funds' net assets that are invested in listed derivatives will be invested in instruments that trade in markets that are members or affiliates of members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Further, Amendment No. 2 supplements the proposed rule change by strengthening the Exchange's commitment to enforcing the applicable continued listing requirements. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[48] to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[49] that the proposed rule change (SR–BatsBZX–2016–48), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

[39] *See id.*

[40] *See id.* at 7, n.7.

[41] *See* Amendment No. 2, *supra* note 6, at 4.

[42] *See id.*

[43] *See* Amendment No. 1, *supra* note 4, at 31.

[44] *See id.*

[45] *See id.*

[46] *See id.* at 29.

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28639 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, December 1, 2016 at 12 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Chair White, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 23, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28772 Filed 11–25–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79375; File No. SR–ICEEU–2016–013]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Finance Procedures

November 22, 2016.

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 November 9, 2016, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(i) and (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

The principal purpose of the changes is to modify certain aspects of the ICE Clear Europe Finance Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe 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

(a) Purpose

The purpose of the amendments is to modify certain aspects of the ICE Clear Europe Finance Procedures. In paragraph 2.1 of the Finance Procedures, amendments are made to add South African rand (''ZAR'') as a currency eligible for Variation Margin and settlement payments for financials and softs contracts which settle in such currency. Other conforming changes have been made in the Finance Procedures (including in paragraph 4) to reflect the addition of ZAR as an eligible currency for such purposes. As with the other currencies currently eligible to be used as Variation Margin and settlement payments for financials and softs contracts, ZAR will be subject to haircuts determine [sic] pursuant to the [sic] Finance Procedures and existing ICE Clear Europe haircut policies. [sic] A typographical error and erroneous cross-reference have also been corrected in paragraph 2.2.

In paragraph 6.1(e) of the Finance Procedures, the daily deadline for a Clearing Member to provide manual cash settlement instructions for same-day USD payments has been extended from 16:00 to 16:45 (London time). ICE Clear Europe is making this change to accommodate a request of Clearing Members, and does not believe it will adversely affect the Clearing House's treasury or other operations. In paragraph 6.1(i)(vii), a change has been made to clarify that end-of-day or ad hoc payments by a Clearing Member to the Clearing House may include, in addition to other listed categories of payments, transfers of Surplus Collateral.

Amendments have been made to paragraph 8.3 of the Finance Procedures, which generally provides that the Clearing House will not recognize any value for non-cash collateral (such as securities collateral) within a specified period prior to its redemption or maturity. Under the existing rule, this period commences one business day prior to redemption or maturity. The amendments adopt a different approach for UK government bonds, for which the period will commence seven business days prior to redemption or maturity. This approach is designed to reflect limitations imposed by the relevant securities settlement system on the transfer of UK government bonds during the seven business day period prior to redemption or maturity.

In paragraph 11.3(b), which addresses procedures for transfer of non-cash permitted cover, an incorrect statement that the Clearing House does not support cross-border or inter-settlement facility settlements, bridge transactions or similar transactions has been removed. In paragraph 11.4, certain account details and matching deadlines for particular securities transfer systems

[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)(i) and (ii).

would be removed from the Finance Procedures. ICE Clear Europe would instead publish such information (as updated from time to time) on its Web site. This change would avoid the need to amend the Finance Procedures to reflect future changes in operational settlement details.

Paragraph 13.9 has been revised to remove an erroneous reference to a letter of credit.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[6] and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7] The amendments are intended to update and clarify certain provisions of the Finance Procedures relevant to settlement payments and use of non-cash permitted cover. As discussed above, the amendments address the acceptance of ZAR for variation margin and settlement payments for certain financials and softs contracts. The amendments also modify the treatment of UK government bonds for valuation purposes to reflect certain restrictions on transfer of such bonds in the period immediately prior to redemption or settlement. In ICE Clear Europe's view, the amendments will generally enhance the procedures for settlement of cash and non-cash permitted cover, and thus promote the prompt and accurate clearance and settlement of cleared contracts. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Section 17A of the Act and the regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting the amendments to the Finance Procedures in order to clarify certain aspects of the settlement of cash and non-cash permitted cover for cleared contracts . . . [sic] ICE Clear Europe does not believe the amendments would materially affect the cost of clearing, adversely affect access to clearing in these products for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. The changes will apply to all Clearing Members. Although certain changes may affect the cost of using UK government bonds as collateral (during the period immediately prior to redemption or maturity of such collateral), those changes are, in ICE Clear Europe's view, necessary and appropriate to reflect limitations on transfer of such bonds in such period. As a result, ICE Clear Europe believes that any impact or burden on competition from such amendments would be appropriate in furtherance of the purpose 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 changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(4)(i) and (ii) [9] thereunder. Certain aspects of the amendments effect a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency 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 does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. Other aspects of the amendments effect a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and does not significantly affect the respective rights or obligations of the clearing agency or persons using its clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2016–013 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–ICEEU–2016–013. 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 Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

All comments received will be posted without change; the Commission does

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22. [sic]

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4).

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–ICEEU–2016–013 and should be submitted on or before December 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28634 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79378; File No. SR–NYSEMKT–2016–63]

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment No. 1, Amending the Co-location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

November 22, 2016.

I. Introduction

On August 16, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 (1) to provide additional information regarding access to various trading and execution services; connectivity to market data feeds and testing and certification feeds; connectivity to Third Party Systems; and connectivity to DTCC provided to Users using data center local area networks; and (2) to establish fees relating to a User's access to various trading and execution services; connectivity to market data feeds and testing and certification feeds; connectivity to DTCC; and other services. The proposed rule change was published for comment in the **Federal Register** on August 26, 2016.[3] The Commission received no comments in response to the proposed rule change.[4] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.[5]

On November 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this order to solicit comments on Amendment No. 1 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment No. 1, and on the issues presented by the proposal.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The proposed rule change seeks to amend the co-location services offered by the Exchange to (1) provide additional information regarding the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (2) establish fees relating to a User's [8] access to trading and execution services; connectivity to data feeds and to testing and certification feeds; connectivity to clearing; and other services.[9]

Background and Access to Exchange Systems

As discussed more fully in the Notice, a User can purchase access to the Liquidity Center Network (''LCN'') and/or internet protocol (''IP'') network in the data center through the purchase of a 1, 10, or 40 Gb LCN circuit, a 10 Gb LX Circuit, bundled network access, Partial Cabinet Solution bundle, or 1, 10 or 40 Gb IP network access.[10] The purchase of any of the LCN or IP network circuit options gives a User access [11] to the Exchange's trading and execution systems, connectivity to the Exchange's certification and testing feeds,[12] and the ability to connect to any NYSE Data Product.[13] More specifically, access to the Exchange's trading and execution system provides a User with access to the Exchange's ''customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement.'' [14] The Exchange seeks to add clarifying language in its proposed rule to reflect the services included with purchase of Exchange system access.[15]

Connectivity to Included Data Products

As discussed more fully below, the Exchange offers connectivity to three types of data products: Included Data Products, Premium NYSE Data Products, and Third Party Data Feeds.[16]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–78629 (August 22, 2016), 81 FR 58992 (''Notice'').

[4] The Commission notes that it did receive one comment letter on a related filing, NYSE–2016–45, which is equally relevant to this filing. *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 (''IEX Letter'').

On September 23, 2016, the NYSE submitted a response (''Response Letter'').

[5] *See* Securities Exchange Act Release No. 34–78968 (September 28, 2016), 81 FR 68493.

[6] Amendment No. 1 is discussed further *infra.* Amendment No. 1 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663-1.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC (''NYSE MKT'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE MKT, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[9] *See* Notice, *supra* note 3, 81 FR at 58993.

[10] *See id.*

[11] The purchase of access is subject to receiving authorization from the NYSE, NYSE MKT or NYSE Arca for the Included Data Products, as applicable. *See id.* at 58993 n.10.

[12] Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange systems. Testing feeds, which do not carry live production data, provide Users with an environment to conduct tests with the non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development. *See id.* at 58993. These feeds are only available over the IP network, however a User without an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See id.* at 58993 n.12.

[13] *See id.* at 58993.

[14] *See id.* The Exchange represents that connectivity to the Exchange systems can be obtained without the purchase of access to the LCN or IP network. *See id.*

[15] *See id.*

[16] *See id.* at 58993–58994. Neither the NYSE Data Products or Third Party Data Feeds provide access or order entry to the Exchange's execution system.

As discussed more fully in the Notice, the Included Data Products include Consolidated Tape Association (''CTA'') disseminated data feeds and NMS data feeds.[17] The CTA disseminates consolidated real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[18] The NMS data feeds include Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.[19] To obtain connectivity to the Included Data Products, a User must enter into a contract with the data provider and pay any applicable fees.[20] Once the Exchange receives an authorization from the data feed provider, the Exchange will provide connectivity to the Included Data Product(s) through a User's LCN or IP network port.[21] The Exchange does not charge any additional fees for this connectivity ''because such access and connectivity is directly related to the purpose of co-location.'' [22] The Exchange proposes to add language to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule (collectively ''Fee Schedules'') to specify that there are no additional fees for connectivity to Included Data Products.[23]

Connectivity to Premium NYSE Data Products

As part of its data product offerings, the Exchange now proposes to provide connectivity to Premium NYSE Data Products from the Exchange and its Affiliate SROs to Users over either the LCN and/or IP network ''because such access and connectivity is directly related to the purpose of co-location.'' [24] The proposed rule change seeks to amend the Fee Schedules to specify the connectivity fees for Premium NYSE Data Products.[25]

As discussed more fully in the Notice, the Premium NYSE Data Products are ''equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products.'' [26] These Integrated Feeds include ''depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errors), opening and closing imbalance data, security status updates (*e.g.,* trade corrections and trading halts) and stock summary messages. The stock summary messages display a market's opening price, high price, low price, closing price, and cumulative volume for a security. Only the Integrated Feeds offer all these components in sequence in one feed.'' [27] Additionally, the NYSE BQT data feed includes, among other things, certain data elements from six of the equity Included Data Products of the Exchange and Affiliated SROs in one data feed: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.[28]

As is the case with Included Data Products, a User of Premium NYSE Data Products must enter into a contract with the data provider for each feed and the provider would then authorize the Exchange to provide connectivity of the particular feed to that User's LCN or IP Network port.[29] The Exchange proposes to charge a User a monthly recurring fee per each Premium NYSE Data Product feed for the connectivity provided by the Exchange.[30]

Connectivity to Third Party Data Feeds

The Exchange's proposal further seeks to offer Third Party Data Feeds to Users and to charge a connectivity fee per feed as reflected on its Fee Schedules.[31] In the data center, the Exchange receives Third Party Data Feeds from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee.[32] With the exceptions of Global OTC and NYSE Global Index, Users connect to Third Party Data Feeds over the IP network.[33] In charging for this service, the Exchange notes that its practice is consistent with the monthly fee Nasdaq charges its co-location customers for connectivity to third party data.[34]

In order to connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed.[35] The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User over a User's port.[36] Users only receive, and are only charged for, the feed(s) which they have entered into contracts for.[37] Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed.[38] The Exchange proposes to charge a monthly recurring fee for connectivity to each Third Party Data Feed, however for SuperFeed and MSCI it proposes to charge different fees which vary based on the bandwidth requirements for the connection.[39] A User is free to receive all or some of the feeds included in the

See id. at 58994 n. 15. Connectivity to the NYSE Data Products is available in three forms: A resilient feed, ''Feed A'', or ''Feed B.'' A resilient feed includes two copies of the same feed for redundancy purposes and Feed A and Feed B are identical feeds. A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. *See id.* at 58993; *see also id.* at 58993 n. 13.

[17] *See* Notice, *supra* note 3, 81 FR at 58994.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.; see also* Amendment No. 1, *supra* note 6.

[23] *See* Notice, *supra* note 3, 81 FR at 58994.

[24] *See id.; see also* Amendment No. 1, *supra* note 6.

[25] *See* Notice, *supra* note 3, 81 FR at 58995.

[26] *See id.* at 58994. Examples include: (1) The NYSE Integrated Feed that includes, among other items, data from three of the equity Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances; and (2) the NYSE BQT data feed that includes, among other items, specific data elements from six of the equity Included Data Products: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO. *See id.* Additionally, with respect to the NYSE Amex and NYSE Arca options data, neither NYSE Amex nor NYSE Arca offer Premium Data Products because there are ''no options data products that integrate, or include data elements from, other option data products in the same manner that the NYSE, NYSE MKT and NYSE Arca Integrated Feeds integrate, or include data elements from, equity Included Data Products.'' *See id.*

[27] *See* Amendment No. 1, *supra* note 6.

[28] *See id.* None of the Included Data Products provide Users with data from the Exchange and Affiliate SROs in one feed. *See id.* Also, according to the Exchange, the Premium Data Products contain more data overall in comparison to the Included Data Products and potentially can be subject to greater technical specifications in order to receive the feed(s). *See* Notice, *supra* note 3, 81 FR at 58995. ''For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.'' *See id.* at 58993 n. 13.

[29] *See* Notice, *supra* note 3, 81 FR at 58994.

[30] *See id.* at 58995.

[31] *See id.* at 58996.

[32] *See id.*

[33] *See id.*

[34] *See id.* The Exchange notes that Nasdaq charges monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX. *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.* There is one exception to this for the ICE feeds which include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. *See id.*

[39] *See id.*

Fee Schedules.[40] Moreover, the Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees,[41] which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.[42] Finally, the Exchange permits third party markets or content providers that are also Users to connect to their own Third Party Data Feeds without a charge.[43] The Exchange represents that it does not charge Users that are third party markets or content providers for connectivity to their own feeds because such parties generally receive their own feeds for purposes of diagnostics and testing.[44]

Connectivity to Other Services

As part of its data center offerings, the Exchange also seeks to provide access and connectivity to Third Party Systems/content service providers, the DTCC[45] (collectively ''Service Providers''), third party certification and testing feeds,[46] and Virtual Control Circuits[47] (''VCCs'').[48] The proposed rule change seeks to amend the Fee Schedules to add new fees for connectivity to these Service Providers and third party certification and testing feeds and to specify that connectivity is dependent on a User meeting the necessary technical requirements, paying the applicable fees, and the Exchange receiving authorization to establish a connection for a User.[49] Similarly, the proposed rule change seeks to amend the Fee Schedules to add a new fee for connectivity for VCCs which will similarly require permission from the other User before the Exchange will establish the connection.[50] Accordingly, the Exchange proposes to amend its Fee Schedules to add recurring monthly connectivity fees for Service Providers and VCCs based upon the bandwidth requirements per system and/or VCC connection between two Users.[51] For third party certification and testing feeds, the Exchange proposes to revise its Fee Schedules to include a monthly recurring $100 fee per feed.[52]

For each service, a User must execute a contract with the respective Service Provider and/or third party certification and testing feed provider(s) pursuant to which a User pays each the associated fee(s) for their services.[53] Once the Exchange receives authorization from the Service Provider and/or third party certification and testing feed provider(s), the Exchange will enable a User to connect to the Service Provider and/or third party certification and testing feed(s) over the IP Network.[54] Similarly, with respect to VCCs, the Exchange will not establish a VCC connection over its IP Network until the other User confirms the VCC request.[55] Finally, the Exchange notes, that its execution system does not provide access to Service Provider systems, nor do the Service Provider systems provide access to the Exchange's execution system.[56]

As noted above, the Commission received one comment letter on a related filing which is equally applicable to this filing.[57] This commenter (1) requested clarification about the history of the fees and ''the increasing costs of maintaining the data center and providing co-location compared to any related fee revenue'' and (2) expressed a concern about whether ''there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services.''[58] Specifically, the commenter noted that the NYSE states that the connectivity fees are used to defray the costs associated with providing co-location to Users, but, the commenter questions whether the fees to cover the increasing costs of providing co-location are applied in an equitable manner.[59] Moreover, with respect to alternatives, the commenter noted that broker-dealers face best execution obligations that are ''critically impacted by sub-millisecond differences in access to exchange systems and market data.''[60] As a result, market participants face the quandary of whether to trade from outside the data center if other members are trading from inside.[61] Additionally, some broker-dealers trading for clients ''may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients.''[62] The commenter believes that this environment ''imposes a form of trading tax on all members by offering different methods of access to different members.''[63] The commenter questions whether true alternatives are available for participants seeking to compete with firms paying for exchange co-location and data services and whether the Exchange's ability to set fees is truly constrained by market forces for a ''comparable product''.[64]

As discussed above, the Exchange submitted a response to the commenter on the related filing.[65] The Exchange in its Response Letter stated that historical information about the development of these product offerings is ''not required by the Act and is not relevant to [] the substance of the Proposal–which is, by definition, forward looking . . . .''[66] Additionally, the Response Letter noted that costs are not the only consideration in setting its prices, but rather the prices ''include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the services.''[67] With respect to the commenter's concern about members needing additional information to assess the fixed costs of exchange membership, the Exchange responded that these are not fixed costs of ''Exchange members'' but instead costs to any User who voluntarily chooses to purchase such services based upon ''[t]he form and latency of access and connectivity that

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.* at 58996.

[44] *See id.* at 58997.

[45] ''Such connectivity to DTCC is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.'' *See id.* at 58998 n. 33.

[46] Certification feeds certify that a User conforms to any of the relevant content service providers' requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing feeds provide Users an environment in which to conduct system tests with non-live data. *See id.* at 58997.

[47] A VCC (previously called a ''peer to peer'' connection) is a two-way connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose. *See id.*

[48] *See id.* at 58995, 58997.

[49] *See id.*

[50] *See id.* at 58997.

[51] *See id.* at 58995, 58997.

[52] *See id.* at 58997.

[53] *See id.* at 58995, 58997.

[54] *See id.* For Third Party Systems, once the Exchange receives the authorization from the respective third party it establishes a unicast connection between the User and the relevant third party over the IP network. *See id.* at 58995. For the DTCC, ''[t]he Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port.'' *See id.* at 58997.

[55] *See id.* at 58997.

[56] *See id.* at 58995, 58997.

[57] *See* IEX Letter, *supra* note 4.

[58] *See id.* at 1–2.

[59] *See id.*

[60] *See id.* at 2.

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id.*

[65] *See* Response Letter, *supra* note 4.

[66] *See id.* at 2.

[67] *See id.*

bests suits a User's needs . . . .'' [68] Users do not require the Exchange's access or connectivity to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.[69]

In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that ''it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.'' [70] The Exchange further stated in response to the commenter's concern of a lack of true alternatives for a ''comparable product'', that the filing lists several alternative options for Users and a User can evaluate the ''relative benefits of those alternatives and choose whichever it deems most beneficial to it . . . .'' [71]

Amendment No. 1

In Amendment No. 1, the Exchange offers additional justification for the proposed rule change.[72] In Amendment No. 1, the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the data center.[73] In the Amendment, the Exchange provided further detail on the benefits provided to Users through the Premium NYSE Data Products including ''depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errors), opening and closing imbalance data, security status updates (*e.g.,* trade corrections and trading halts) and stock summary messages.'' [74] The Exchange also clarified which costs are associated with providing Users with access and connectivity to the various services discussed in the filing, including the Premium NYSE Data Products.

III. Proceedings To Determine Whether To Disapprove SR–NYSEMKT–2016–63 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [75] to determine whether the proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1. 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, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' [76]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [77] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [78]

As discussed above, the Exchange's proposal would, among other things, establish fees relating to a User's access to trading and execution services, connectivity to data feeds and to testing and certification feeds, connectivity to clearing, and other services. The Exchange believes that the proposed fees are consistent with Sections 6(b)(4), (5), and (8) of the Act because the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants.[79] The Exchange stated that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms.[80] Additionally, the Exchange believes that because there are alternatives for a User both in and outside of the data center if it believes the fees are too excessive, the fees are consistent with the Act.[81] Specifically, the Exchange noted that a User could terminate its co-location arrangement with the exchange ''and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location.'' [82] Additionally, ''[a]s alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.'' [83] However, the Exchange also stated that the expectation of co-location was that normally Users would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange by being co-located.[84] Therefore, as the Exchange states in Amendment No. 1, both Included Data Products and Premium NYSE Data Products are ''directly related to the purpose of co-location.'' [85]

The commenter suggests that Users do not in fact have alternatives to paying the connectivity fee to obtain Premium NYSE Data Products.[86] If these products are integral to co-located Users for trading on the Exchange, the Commission questions whether obtaining the information contained in these products from another source is, in fact, a viable alternative given the importance of receiving such information in a timely manner. The

[68] *See id.* at 4.

[69] *See id.*

[70] *See id.* at 5. The Exchange makes a further argument about the Exchange being a regulated co-location space whereas other unregulated co-location options are available. *See id.*

[71] *See id.* at 6. The Exchange noted that it is not addressing the commenter's statements about broker-dealers needing to purchase market data from the Exchange as that is outside the scope of this proposal. *See id.* at 5 n.13.

[72] *See* Amendment No. 1, *supra* note 6.

[73] *See id.*

[74] *See id.; see also supra* note 27 and accompanying text.

[75] 15 U.S.C. 78s(b)(2)(B).

[76] 15 U.S.C. 78f(b)(4).

[77] 15 U.S.C. 78f(b)(5).

[78] 15 U.S.C. 78f(b)(8).

[79] *See* Notice, *supra* note 3, 81 FR at 58999.

[80] *See id.*

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See* Amendment No. 1, *supra* note 6.

[86] *See* IEX Letter, *supra* note 4.

Commission is concerned that the Exchange has not supported its argument that there are viable alternatives for Users inside the data center in lieu of obtaining such information from the Exchange. The Commission seeks comment on whether Users do have viable alternatives to paying the Exchange a connectivity fee for the Premium NYSE Data Products.

Additionally, the Exchange states that both Included Data Products and Premium NYSE Data Products are ''directly related to the purpose of co-location.'' The Commission is concerned that the Exchange has not made clear why including the cost of connectivity to the Included Data Products in the purchase of a LCN or IP network connection and charging an additional fee to obtain the Premium NYSE Data Products is an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. The Commission is concerned that the Exchange has not identified a distinction between the provision of connectivity to Included Data Products and the provision of connectivity to Premium NYSE Data Products, as opposed to a distinction between the utility of the Included Data Products and Premium NYSE Data Products to Users, which the Exchange has demonstrated, even though these are all NYSE proprietary data products. Therefore, the Commission is concerned that the Exchange has not identified a reasonable basis for charging Users a separate connectivity fee for the Premium NYSE Data Products while including connectivity in the purchase price for a LCN/IP network connection. The Exchange stated in its filing that both are ''directly related to the purpose of co-location'' but it has not clearly justified why this permits including the connectivity fee for Included Data Products as part of the LCN or IP Network connection, even for those Users that do not use the Included Data Products, but not including the connectivity fee for the Premium NYSE Data Products as well. Similarly, the Exchange justifies the costs associated with providing these feeds by stating ''[i]n order to offer connectivity to the Premium NYSE Data Products, the Exchange must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the connectivity, including by ensuring that the network infrastructure has the necessary bandwidth for the Premium NYSE Data Products and responding to any production issues.'' [87] The Commission does not believe the Exchange has clearly explained why the same rationale would not apply to the Included Data Products. The Exchange has sought to justify this on the basis that the Premium NYSE Data Products are similar to any other service offered by the Exchange such as connectivity to Third Party Systems and DTCC.[88] The Commission however is concerned that these Premium NYSE Data Products are similar to the Included Data Products and therefore should not include different fee structures as they are the same offering by the Exchange within the contemplated purpose of co-location. The Commission seeks comment on whether charging fees for connectivity to Included Data Products and Premium NYSE Data Products in a different manner is consistent with Section 6(b)(4) of the Act.

Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(4), (5), or (8) [89] or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[90] any request for an opportunity to make an oral presentation.[91]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment No. 1, should be approved or disapproved by December 20, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 3, 2017. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Amendment No. 1, as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(4), (5) and (8),[92] or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change.

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–NYSEMKT–2016–63 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 No. SR–NYSEMKT–2016–63. 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

[87] *See* Amendment No. 1, *supra* note 6.

[88] *See id.*

[89] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[90] 17 CFR 240.19b–4.

[91] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to 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).

[92] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

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 No. SR–NYSEMKT–2016–63, and should be submitted by December 20, 2016. Rebuttal comments should be submitted by January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28637 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32363; 812–14485]

OWLshares Trust, et al.; Notice of Application

November 22, 2016.

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. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: OWLshares Trust (''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, New Millennium Macro, LLC d/b/a OWLshares Advisors (the ''Initial Adviser''), a Nevada limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and ALPS Distributors, Inc. (''Distributor''), a Colorado corporation and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on June 11, 2015 and amended on October 23, 2015, June 29, 2016 and October 13, 2016.

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 December 19, 2016, 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 20549–1090; Applicants: OWLshares Trust, 312 Arizona Avenue, Santa Monica, CA 90401; New Millennium Macro, LLC, 312 Arizona Avenue, Santa Monica, CA 90401; and ALPS Distributors, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551–6728, 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.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, 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 Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares 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 in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each

[93] 17 CFR 200.30–3(a)(57).

[1] Applicants request that the order apply to the initial series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term ''Fund''), 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 Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as 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. 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 represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund 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 or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund 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.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if 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 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28640 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

[3] 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, moreover, 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 a Second-Tier Affiliate, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79377; File No. SR–NASDAQ–2016–134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Certain Exchange-Traded Managed Funds

November 22, 2016.

I. Introduction

On September 28, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''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 list and trade the common shares (''Shares'') of the following Exchange-Traded Managed Funds: Gabelli ESG NextShares; Gabelli All Cap NextShares; Gabelli Equity Income NextShares; Gabelli Small and Mid Cap Value NextShares; and Gabelli Media Mogul NextShares (individually, ''Fund,'' and collectively, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on October 17, 2016.[3] On October 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79082 (Oct. 11, 2016), 81 FR 71549 (''Notice'').

[4] In Amendment No. 1 to the proposed rule change, the Exchange: (a) Identified the public Web sites on which certain information about the Funds would be available; (b) discussed the obligations of the Adviser and its related personnel under the Advisers Act (as defined herein); (c) noted that the Bank of New York Mellon would act as custodian and transfer agent for the Funds; (d) clarified certain investment strategies of the Funds; and (e) made other technical, non-substantive corrections in the proposed rule change. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2016-134/nasdaq2016134-1.pdf.* Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, which are defined in Nasdaq Rule 5745(c)(1). Each Fund is a series of Gabelli NextShares Trust (''Trust'').[5] The Exchange represents that the Trust is registered with the Commission as an open-end investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6]

Gabelli Funds, LLC (''Adviser'') will be the adviser to the Funds. G.distributors, LLC will be the principal underwriter and distributor of each Fund's Shares. The Bank of New York Mellon will act as custodian and transfer agent. BNY Mellon Investment Servicing (US) Inc. will act as the sub-administrator to the Funds.

The Exchange has made the following representations and statements in describing the Funds.[7]

A. Principal Investment Strategies of the Funds

According to the Exchange, each Fund will be actively managed and will pursue the various principal investment strategies described below.[8]

1. Gabelli ESG NextShares (''Gabelli ESG Fund'')

The Gabelli ESG Fund seeks to provide capital appreciation. The Gabelli ESG Fund will seek to achieve its objective by investing substantially all, and in any case no less than 80%, of its net assets (plus borrowings for investment purposes) in common and preferred stocks of companies that meet the Gabelli ESG Fund's guidelines for social responsibility at the time of investment. Pursuant to its social responsibility guidelines, the Gabelli ESG Fund will not invest in publicly traded fossil fuel (coal, oil, and gas) companies, the top 50 defense/weapons contractors, or in companies that derive more than 5% of their revenues from the following areas: Tobacco, alcohol, gaming, defense/weapons production, and companies involved in the manufacture of abortion-related products.

2. Gabelli All Cap NextShares (''Gabelli All Cap Fund'')

The Gabelli All Cap Fund primarily seeks to provide capital appreciation. Under normal market conditions, the Gabelli All Cap Fund will invest at least 80% of its net assets plus borrowings for investment purposes in common stocks and preferred stocks of companies of all capitalization ranges that are listed on a recognized securities exchange or similar market. The Gabelli All Cap Fund may also invest in common and preferred securities of foreign issuers.

3. Gabelli Equity Income NextShares (''Gabelli Equity Income Fund'')

The Gabelli Equity Income Fund seeks a high level of total return on its assets with an emphasis on income. The Gabelli Equity Income Fund will seek to achieve its investment objective through a combination of capital appreciation and current income by investing, under normal market conditions, at least 80% of its net assets plus borrowings for investment purposes in income-producing equity securities. Income-producing equity securities include, for example, common stock and preferred stock.

4. Gabelli Small and Mid Cap Value NextShares (''Gabelli Small and Mid Cap Value Fund'')

The Gabelli Small and Mid Cap Value Fund seeks long-term capital growth. Under normal market conditions, the Gabelli Small and Mid Cap Value Fund will invest at least 80% of its net assets plus borrowings for investment purposes in equity securities (such as common stock and preferred stock) of companies with small or medium-sized market capitalizations (''small cap'' and ''mid cap'' companies, respectively). The Gabelli Small and Mid Cap Value Fund defines ''small cap companies'' as those with a market capitalization generally less than $3 billion at the time of investment and ''mid cap companies'' as those with a market capitalization between $3 billion and $12 billion at the time of investment. The Gabelli Small and Mid Cap Value Fund may invest in the equity securities of companies of any market capitalization, subject to its policy of investing at least 80% of its net assets in the equity securities of small-cap and mid-cap companies at the time of investment. In addition, the Gabelli Small and Mid Cap Value Fund may invest up to 25% of its total assets in securities of issuers in a single industry.

5. Gabelli Media Mogul NextShares (''Gabelli Media Mogul Fund'')

The Gabelli Media Mogul Fund seeks to provide capital appreciation. Under normal market conditions, the Fund will invest at least 80% of net assets plus borrowings for investment purposes in (a) companies that were spun-off from Liberty Media Corporation *as constituted in 2001,* (b) companies that resulted from subsequent mergers of any of those spin-offs, (c) stocks that track performance of *those spin-offs or* companies that resulted from subsequent mergers of any of those spin-offs, and (d) public companies in which Liberty Media Corporation and its successor companies invest. The current set of companies in which the Fund may invest includes U.S. and non-U.S. listed companies in the telecommunications, media, publishing, and entertainment industries.

B. Portfolio Disclosure and Composition File

Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

As defined in Nasdaq Rule 5745(c)(3), the ''Composition File'' is the specified portfolio of securities, cash, or both that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities, cash, or both that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the National

[5] According to the Exchange, the Trust and certain affiliates of the Trusts have obtained exemptive relief under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 31608 (May 19, 2015) (File No. 812–14438). The Exchange represents that, in compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that each Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended.

[6] *See* Registration Statement on Form N–1A for the Trust dated June 6, 2016 (File Nos. 333–211881 and 811–23160).

[7] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (''NAV''), fees, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1, and Registration Statement, as applicable. *See supra* notes 3, 4, and 6, respectively, and accompanying text.

[8] According to the Exchange, additional information regarding the Funds also will be available on one of two public Web sites for the Funds.

Securities Clearing Corporation once each business day before the open of trading in Shares on that day and also will be made available to the public each day on a free Web site.[9]

Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of a Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the Fund's portfolio.[10]

C. Intraday Indicative Value

For each Fund, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value,'' will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session [11] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the Intraday Indicative Value will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service. The Intraday Indicative Value will be based on current information regarding the value of the securities and other assets held by a Fund.[12] The purpose of the Intraday Indicative Value is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*e.g.,* if an investor wants to acquire approximately $5,000 of a Fund, how many Shares should the investor buy?).[13]

D. NAV-Based Trading

Shares of a Fund will be purchased and sold in the secondary market at prices directly linked to the Fund's next-determined NAV using a trading protocol called ''NAV-Based Trading.'' All bids, offers, and execution prices of Shares will be expressed as a premium or discount (which may be zero) to a Fund's next-determined NAV (*e.g.,* NAV-$0.01, NAV+$0.01).[14] Each Fund's NAV will be determined each business day, normally as of 4:00 p.m. E.T.

Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV. Nasdaq represents that all Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which will indicate that the Shares are traded using NAV-Based Trading.

According to the Exchange, member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[15] In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium or discount of a stated amount to the next-determined NAV to be represented by the same increment or decrement from the proxy price used to denote NAV (*e.g.,* NAV-$0.01 would be represented as 99.99; NAV+$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq represents that it will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers, and execution prices of Shares that are made available to the investing public follow the ''NAV-$0.01/NAV+$0.01'' (or similar) display format. Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the ''NAV-$0.01/NAV+$0.01'' (or similar) display format. Member firms may use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the ''NAV-$0.01/NAV+$0.01'' (or similar) display format. Alternatively, member firms may source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (*e.g.,* Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV-$0.01/NAV+$0.01'' (or similar) display format. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

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 Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section

[9] The free Web site containing the Composition File will be *www.nextshares.com.*

[10] In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, 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 for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

[11] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m. Eastern Time or ''E.T.''; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m. E.T.).

[12] The Intraday Indicative Values disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

[13] Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund's Registration Statement, Web site, and any advertising or marketing materials will include prominent disclosure of this fact. Although Intraday Indicative Values may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

[14] According to the Exchange, the premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees, and other costs in connection with creating and redeeming creation units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading.

[15] According to the Exchange, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically canceled as of the close of trading on that day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

[16] 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).

6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Shares will be subject to Rule 5745, which sets forth the initial and continued listing criteria applicable to Exchange-Traded Managed Fund Shares. A minimum of 50,000 Shares and no less than two creation units of each Fund will be outstanding at the commencement of trading on the Exchange.

Nasdaq 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. Every order to trade Shares of the Funds is subject to the proxy price protection threshold of plus/minus $1.00, which determines the lower and upper threshold for the life of the order and provides that the order will be canceled at any point if it exceeds $101.00 or falls below $99.00, the established thresholds.[18] With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.[19]

Nasdaq also represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[20] The Exchange represents that its surveillance procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'')[21] regarding trading in the Shares, and in exchange-traded securities and instruments held by the Funds (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), and FINRA may obtain trading information from other markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, and in exchange-traded securities and instruments held by the Funds (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) the dissemination of information regarding the Intraday Indicative Value and Composition File; (d) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (e) information regarding NAV-Based Trading protocols.

The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained. As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically canceled as of the close of trading on that day. The Information Circular will discuss the effect of this characteristic on existing order types. In addition, Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

Nasdaq states that the Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer.[22] The Exchange represents that the Adviser has implemented a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and changes to, each Fund's portfolio.[23] The Reporting Authority[24] will ensure that the Composition File will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio positions and changes in the positions. In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable entity will implement a fire wall with respect to its relevant personnel and broker-dealer affiliate, as the case may be, regarding access to information concerning the composition of, and changes to, the relevant Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

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 Act,[25] which sets forth Congress' finding that it is in the public interest and appropriate for the

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Nasdaq Rule 5745(h).

[19] *See* Nasdaq Rule 5745(b)(6).

[20] The Exchange states that FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[21] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of a Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] *See* Notice, supra note 3, 81 FR at 71550.

[23] *See id.* The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[24] *See* Nasdaq Rule 5745(c)(4).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

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. Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape and separately disseminated to member firms and market data services through the Exchange data feeds.

Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus or minus the trade's executed premium or discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file [26] that will be created for exchange-traded managed funds and that will be confirmed to the member firms participating in the trade to supplement the previously provided information with final pricing.

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each business day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service (''MFQS'') by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the value to market participants and market data vendors via the Mutual Fund Dissemination Service so that all firms will receive the NAV per share at the same time.

The Exchange further represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist that, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading.

Prior to the commencement of market trading in Shares, each Fund will be required to establish and maintain a public Web site through which its current prospectus may be downloaded. In addition, a separate Web site (*www.nextshares.com*) will include the prior business day's NAV, and the following trading information for that business day expressed as premiums or discounts to NAV: (a) Intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium or discount to NAV (''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (''Closing Bid/Ask Spread.''). The Web site at *www.nextshares.com* will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the Funds' portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Funds on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by any Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[27] If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rules 5800, *et seq.*

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice and Amendment No. 1,[28] and the Exchange's description of the Funds. The Commission notes that the Funds and the Shares must comply with the requirements of Nasdaq Rule 5745 and the conditions set forth in this proposed rule change to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [29] 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 Act,[30] that the proposed rule change (SR–NASDAQ–2016–134), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28636 Filed 11–28–16; 8:45 am]

BILLING CODE 8011–01–P

[26] According to Nasdaq, File Transfer Protocol (''FTP'') is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

[27] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[28] *See supra* notes 3 and 4, respectively.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14958 and #14959]

Virginia Disaster Number VA–00065

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4291–DR), dated 11/02/2016.

Incident: Hurricane Matthew.

Incident Period: 10/07/2016 through 10/15/2016.

EFFECTIVE DATES: 11/17/2016.

Physical Loan Application Deadline Date: 01/03/2017.

EIDL Loan Application Deadline Date: 08/02/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Virginia, dated 11/02/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Hampton City, Portsmouth City, Suffolk City.

Contiguous Counties: (Economic Injury Loans Only):
Virginia: Isle of Wight, Poquoson City, Southampton.
North Carolina: Gates.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28646 Filed 11–28–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14911 and #14912]

North Carolina; Disaster Number NC–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 14.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4285–DR), dated 10/10/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/24/2016.

Effective Date: 11/15/2016.

Physical Loan Application Deadline Date: 01/09/2017.

EIDL Loan Application Deadline Date: 07/10/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Carolina, dated 10/10/2016 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/09/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28645 Filed 11–28–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14987 and #14988]

PENNSYLVANIA Disaster #PA–00075

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 11/18/2016.

Incident: Flash Flooding.

Incident Period: 10/21/2016.

Effective Date: 11/18/2016.

Physical Loan Application Deadline Date: 01/17/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 08/18/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Centre, Lycoming.

Contiguous Counties:
Pennsylvania: Blair, Bradford, Clearfield, Clinton, Columbia, Huntingdon, Mifflin, Montour, Northumberland, Potter, Sullivan, Tioga, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14987 6 and for economic injury is 14988 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: November 18, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–28647 Filed 11–28–16; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Information Collection Activities (Complaints, Petitions for Declaratory Orders, and Petitions for Relief Not Otherwise Specified)

AGENCY: Surface Transportation Board.

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 of 1995, 44 U.S.C. 3501–3521 (PRA), the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval of an extension of the information collections required for (1) complaints filed under 49 U.S.C. 1321, 10701–10707, 11101 and 11701–11707 and 49 CFR 1111; (2) petitions for declaratory orders under 5 U.S.C. 554(e) and 49 U.S.C. 1321; and (3) catch-all petitions (for relief not otherwise specified) under 49 U.S.C. 1321 and 49 CFR part 1117. Under these statutory and regulatory sections, the Board provides procedures for persons to make a broad range of claims and to seek a broad range of remedies before the Board. The information collections relevant to these complaints and petitions are described separately below.

DATES: Comments on this information collection should be submitted by January 28, 2017.

ADDRESSES: Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Information Collection Activities.''

FOR FURTHER INFORMATION CONTACT: For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0284 or at *Michael.Higgins@stb.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Collection Number 1

Title: Complaints under 49 CFR 1111.
OMB Control Number: 2140–0029.
STB Form Number: None.
Type of Review: Extension with change.
Respondents: Affected shippers, railroads and communities that seek redress for alleged violations related to unreasonable rates, unreasonable practices, service issues, and other statutory claims.
Number of Respondents: Three.
Estimated Time per Response: 467 hours.
Frequency: On occasion. In 2015, respondents filed three complaints of this type with the Board.
Total Burden Hours (annually including all respondents): 1,401 (estimated hours per complaint (467) × total number of complaints in 2015 (3)).
Total ''Non-hour Burden'' Cost: $4,386 (estimated non-hour burden cost per complaint ($1,462) × total number of complaints in 2015(3)).
Needs and Uses: Under the Board's regulations, persons may file complaints before the Board pursuant to 49 CFR part 1111 seeking redress for alleged violations of provisions of the Interstate Commerce Act, Public Law 104–88, 109 Stat. 803 (1995). The required content of a complaint is outlined at 49 CFR 1111.1(a). In the last few years, the most significant complaints filed at the Board allege that railroads are charging unreasonable rates or that they are engaging in unreasonable practices. *See, e.g.,* 49 U.S.C. 10701, 10704, and 11701. The collection by the Board of these complaints, and the agency's action in conducting proceedings and ruling on the complaints, enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 2

Title: Petitions for declaratory orders.
OMB Control Number: 2140–0031.
STB Form Number: None.
Type of Review: Extension with change.
Respondents: Affected shippers, railroads and communities that seek a declaratory order from the Board to terminate a controversy or remove uncertainty.
Number of Respondents: 11.
Estimated Time per Response: 183 hours.
Frequency: On occasion. In 2015, respondents filed 12 petitions of this type with the Board.
Total Burden Hours (annually including all respondents): 2,196 hours (183 estimated hours per petition × total number of petitions in 2015 (12)).
Total ''Non-hour Burden'' Cost: $14,832 (estimated non-hour burden cost per petition ($1,236) × total number of petitions in 2015 (12)).
Needs and Uses: Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for a declaratory order cover a broad range of requests, the Board does not prescribe specific instructions for the filing of a petition for declaratory order. The collection by the Board of these petitions for declaratory order enables the Board to meet its statutory duty to regulate the rail industry.

Collection Number 3

Title: Petitions for relief not otherwise provided.
OMB Control Number: 2140–0030.
STB Form Number: None.
Type of Review: Extension with change.
Respondents: Affected shippers, railroads and communities that seek to address transportation-related issues under the Board's jurisdiction that are not otherwise specifically provided for under the Board's other regulatory provisions.
Number of Respondents: Five.
Estimated Time per Response: 24.5 hours.
Frequency: On occasion. In 2015, five petitions of this type were filed with the Board.
Total Burden Hours (annually including all respondents): 122.5 (estimated hours per petition (24.5) × total number of petitions in 2015 (five)).
Total ''Non-hour Burden'' Cost: $350 (estimated non-hour burden cost per petition ($70) × total number of petitions in 2015 (five)).
Needs and Uses: Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board's catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as petitions seeking waivers of the Board's regulations) not otherwise specifically provided for under the Board's other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) A short, plain statement of jurisdiction, (b) a short, plain statement of petitioner's claim, and (c) request for relief. The collection by the Board of these petitions enables the Board to more fully meet its statutory duty to regulate the rail industry.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: November 22, 2016.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–28613 Filed 11–28–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2017, Through December 31, 2017

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2017, through December 31, 2017, will remain at 25 percent of safety-sensitive employees for random drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Ms. Vicky Dunne, Office of Aerospace Medicine, Drug Abatement Division, Program Policy Branch (AAM–820), Federal Aviation Administration, 800 Independence Avenue SW., Room 806, Washington, DC 20591; Telephone (202) 267–8442.

Discussion: Pursuant to 14 CFR 120.109(b), the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2015, the random drug test positive rate was 0.523%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2017.

Similarly, 14 CFR 120.217(c), requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2015, the random alcohol test violation rate was 0.083%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2017.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14, section 120.109(b) (for drug testing), and 120.217(c) (for alcohol testing).

Issued in Washington, DC, on November 16, 2016.

James R. Fraser,

Federal Air Surgeon.

[FR Doc. 2016–28555 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0212]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 31 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before December 29, 2016. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0212 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 31 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

James A. Bartolo Jr.

Mr. Bartolo, 59, has a chorioretinal scar in his right eye due to a traumatic incident in 1980. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Ocular Trauma, nail went in eye, 1980. He has been stable for over 20 years . . . James has driven without any problems and I do not foresee any problems driving a commercial vehicle in the future.'' Mr. Bartolo reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds an operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Harry S. Bumps

Mr. Bumps, 68, has glaucoma in his left eye due to a traumatic incident in 1976. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2016, his ophthalmologist stated, ''In my opinion I feel he has sufficient vision to operate a commercial vehicle.'' Mr. Bumps reported that he has driven straight trucks for 40 years, accumulating 360,000 miles and tractor-trailer combinations for 40 years, accumulating 200,000 miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows one crash for ''limitation on backing for due regard to safety'' and no convictions for moving violations in a CMV.

Brian T. Castoldi

Mr. Castoldi, 44, has a central vein occlusion in his right eye since 2012. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Given Brian's visual handicap, I believe he is both capable and safe to drive a commercial vehicle.'' Mr. Castoldi reported that he has driven straight trucks for 8 years, accumulating 874,000 miles and tractor-trailer combinations for 9 years, accumulating 1.23 million miles. He holds an operator's license from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William B. Friend

Mr. Friend, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2016, his ophthalmologist stated, ''In my medical opinion, I feel that he has sufficient vision to perform required [*sic*] to operate a commercial vehicle as he has adapted to his visual changed [*sic*] in his left eye over a course of his lifetime and it appears to cause him no limitations at this time.'' Mr. Friend reported that he has driven straight trucks for 38 years, accumulating 570,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Willie George

Mr. George, 70, has a macular scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2016, his ophthalmologist stated, ''In my opinion, Mr. Willie George level [sic] vision is sufficient for him to continue to operate a commercial vehicle.'' Mr. George reported that he has driven straight trucks for 15 years, accumulating 510,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.25 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David E. Goff

Mr. Goff, 62, has had a retinal detachment in his right eye since 1978. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''In my opinion, Mr. Goff has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Goff reported that he has driven straight trucks for 15 years, accumulating 45,000 miles, and tractor-trailer combinations for 10 years, accumulating 12,000 miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michal Golebiowski

Mr. Golebiowski, 36, has prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, ''In my opinion Mr. Golebiowski regardless his left eye blindness and mil [*sic*] protanopia has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Golebiowski reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.36 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dana L. Gould

Mr. Gould, 55, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, ''In my opinion, Mr. Gould has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gould reported that he has driven straight trucks for 30 years, accumulating 150,000 miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Johnny J. Gowdy

Mr. Gowdy, 64, has complete loss of vision in his right eye due to a traumatic incident in 2003. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''In my medical opinion, Mr. Gowdy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gowdy reported that he has driven tractor-trailer combinations for 40 years, accumulating 2.6 million miles. He holds an operator's license from Mississippi. His driving record for the last 3 years shows no crashes and 2 convictions for moving violations in a CMV; one for exceeding the speed limit by 16 mph and the other for exceeding the speed limit by 15 mph.

Richard E. Hadler

Mr. Hadler, 49, has had a macular scar in his left eye since 2011. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, ''I feel Mr. Hadler's vision is stable for a commercial driver's license.'' Mr. Hadler reported that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 17 years, accumulating 2.04 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Harrison

Mr. Harrison, 28, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/25. Following an examination in 2016, his optometrist stated, ''Donald meets all the vision

requirements listed for the exemption program and therefore I believe he has sufficient vision required to perform the driving tasks required to operate a commercial vehicle [*sic*].'' Mr. Harrison reported that he has driven straight trucks for 9 years, accumulating 18,000 miles, and tractor-trailer combinations for 9 years, accumulating 18,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Channing L. Herrell

Mr. Herrell, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2016, his optometrist stated, ''It is my professional opinion that the patient meets the visual requirements to operate a commercial vehicle.'' Mr. Herrell reported that he has driven straight trucks for 26 years, accumulating 13,000 miles, and tractor-trailer combinations for 26 years, accumulating 23,400 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Loyd F. Hovey

Mr. Hovey, 67, has exotropia in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/25. Following an examination in 2016, his optometrist stated, ''He demonstrates sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hovey reported that he has driven straight trucks for 51 years, accumulating 1 million miles, and tractor-trailer combinations for 35 years, accumulating 2.63 million miles. He holds a Class AM CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George T. Huffman Jr.

Mr. Huffman, 53, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2016, his optometrist stated, ''He is now 52 years old and has driven commercially previously, and currently has sufficient vision to perform driving tasks required to operate a commercial vehicle, as nothing has changed visually.'' Mr. Huffman reported that he has driven tractor-trailer combinations for 29 years, accumulating 2.9 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel E. Kinney

Mr. Kinney, 63, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2016, his ophthalmologist stated, ''He has been driving a commercial vehicle for several years without incident and his current ophthalmologic [*sic*] status is unchanged for several years. I believe that he is qualified to operate a commercial vehicle.'' Mr. Kinney reported that he has driven tractor-trailer combinations for 40 years, accumulating 478,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Shane M. Lovell

Mr. Lovell, 25, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Based on the results of this testing I believe Mr. Lovell qualifies for a medical exemption regarding his visual status. Although he has permanently reduced acuity in a single eye his peripheral vision and binocular acuity remain adequate based on the requirements set forth by the FMCSA.'' Mr. Lovell reported that he has driven straight trucks for 4 years, accumulating 40,000 miles, and tractor-trailer combinations for 4 years, accumulating 420,000 miles. He holds an operator's license from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jason W. Mack

Mr. Mack, 34, has chorioretinal scarring in his right eye due to a traumatic incident childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''In my opinion, Jason's vision loss does not prohibit him from operating a commercial vehicle.'' Mr. Mack reported that he has driven straight trucks for 15 years, accumulating 375,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry G. Montgomery

Mr. Montgomery, 62, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''In my medical opinion as a license [*sic*] optometrist, Mr. Montgomery has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Montgomery reported that he has driven straight trucks for 37 years, accumulating 19,240 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John P. O'Doherty

Mr. O'Doherty, 53, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2016, his optometrist stated, ''It is my opinion that Mr. O'Doherty has sufficient vision for a commercial driver's license.'' Mr. O'Doherty reported that he has driven straight trucks for 4 years, accumulating 100,000 miles, and tractor-trailer combinations for 21 years, accumulating 18.9 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Antonio Rivera

Mr. Rivera, 53, has complete loss of vision in his right eye due to a traumatic incident in 1990. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, ''I believe Mr. Antonio Rivera has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rivera reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.3 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Julio Rivera

Mr. Rivera, 68, has had optic nerve atrophy in his left eye since 2007. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2016, his ophthalmologist stated, ''Using both eyes, sufficient vision is present (20/20 ou) to perform Driving [sic] tasks Required [sic] to operate a commercial vehicle.'' Mr. Rivera reported that he has driven tractor-trailer combinations

for 18 years, accumulating 558,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steve C. Sinclair

Mr. Sinclair, 66, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/25. Following an examination in 2016, his optometrist stated, ''He has a history of congenital strabismic amblyopia. Based on the last visual field test, there is no indication that the visual field in either eye is adversely affected, and the visual fields should not impede Mr. Sinclair's ability to operate a commercial vehicle.'' Mr. Sinclair reported that he has driven straight trucks for 32 years, accumulating 1.28 million miles. He holds an operator's license from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerrell L. Smith

Mr. Smith, 32, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''I feel his vision is stable and is capable of operating a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 5 years, accumulating 125,000 miles, and tractor-trailer combinations for 5 years, accumulating 25,000 miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ricky E. Smith

Mr. Smith, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''In my opinion Mr. Smith's vision in his right eye will not limit his ability to drive a commercial vehicle; and his condition is stable and should not worsen over time.'' Mr. Smith reported that he has driven straight trucks for 37 years, accumulating 740,000 miles, tractor-trailer combinations for 37 years, accumulating 185,000 miles, and buses for 37 years, accumulating 37,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Venton E. Smith

Mr. Smith, 45, has had amblyopia in his right since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Mr. Venton has sufficient vision to continue operating a vehicle with caution. Please note that I am not a vehicle examiner and my opinion alone cannot determine Mr. Venton's ability to operate a commercial vehicle. The purpose of this letter is to summarize testing required by the DOT.'' Mr. Smith reported that he has driven straight trucks for 3 years, accumulating 195,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Willie J. Smith

Mr. Smith, 58, has central corneal opacity in his right eye due to a traumatic incident in 1985. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, ''Given that he has a long-standing medical condition that he is fully adapted to with the left eye being fully functional, in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven tractor-trailer combinations for 36 years, accumulating 7.87 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glen W. Stake Jr.

Mr. Stake, 43, has had eccentric fixation in his left eye due to retrobulbar optic nerve damage since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/80. Following an examination in 2016, his optometrist stated, ''I feel that he will safely pass and use a commercial driver's license, despite retrobulbar optic nerve damage form accident at age 5.'' Mr. Stake reported that he has driven straight trucks for 6 years, accumulating 300,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John D. Stork

Mr. Stork, 57, has had a prosthetic in his right eye due to a traumatic incident in 1984. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, ''Upon visual field findings included and full eye exam, I find the patient can perform the driving tasks required to operate a commercial vehicle.'' Mr. Stork reported that he has driven straight trucks for 14 years, accumulating 840,000 miles, and tractor-trailer combinations for 10 years, accumulating 540,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David T. Tann

Mr. Tann, 35, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2016, his optometrist stated, ''Mr. Tann's vision in his left eye has been weak since childhood, this is nothing new and is stable. Mr. Tann should have no problems operating a commercial vehicles.'' Mr. Tann reported that he has driven tractor-trailer combinations for 6 years, accumulating 90,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeremy M. Trager

Mr. Trager, 35, has choroidal melanoma in his right eye since 2012. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, ''I believe he should have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Trager reported that he has driven straight trucks for 9 years, accumulating 32,400 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James R. Wagner

Mr. Wagner, 62, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, ''It is my opinion that Mr. Wagner has sufficient visual ability at present to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wagner reported that he has driven straight trucks for 38 years, accumulating 988,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and 1 conviction for a

moving violation in a CMV; speeding 15–20 mph above the limit.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2016–0212 in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2016–0212 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: November 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–28680 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0397]

Commercial Driver's License: Oregon Department of Transportation; Application for Exemption, Correction

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of final disposition; grant of application for exemption; correction.

SUMMARY: The Federal Motor Carrier Safety Administration published its decision in the **Federal Register** of April 5, 2016, to grant the Oregon Department of Transportation (ODOT) and all other State Driver Licensing Agencies (SDLAs), a limited exemption from the commercial learner's permit (CLP) requirement in 49 CFR 383.25(c). Due to an error, the exemption was not extended to include the CLP requirement in 49 CFR 383.73(a)(2)(iii). Today's correction makes it clear that the exemption granted to ODOT and other SDLAs from the CLP requirements includes 49 CFR 383.25(c) and 49 CFR 383.73(a)(2)(iii).

DATES: Effective on November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 5, 2016, correct pages 19703 and 19705 as follows: On page 19703 in the first column, correct the **SUMMARY** first sentence to read, ''FMCSA announces its decision to grant the Oregon Department of Transportation (ODOT) a limited exemption from the commercial learner's permit (CLP) requirements in 49 CFR 383.25(c) and 49 CFR 383.73(a)(2)(iii).'' On page 19705 in the first column, correct Section V. FMCSA Response and Decision first sentence to read, ''The FMCSA has evaluated ODOT's application on its merits following full consideration of the comments submitted to the docket, and has decided to grant the exemption from 49 CFR 383.25(c) and 49 CFR 383.73(a)(2)(iii) for a period of 2 years.''

Issued on: November 22, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–28685 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0196]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests approval to extend an existing ICR titled, ''Transportation of Hazardous Materials, Highway Routing.'' The information reported by States and Indian tribes is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on their highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations. FMCSA received no comments in response to the 60-day **Federal Register** Notice published on July 29, 2016.

DATES: Please send your comments by December 29, 2016. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0196. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via

electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Vincent Babich, Office of Enforcement and Compliance, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–4871; Email Address: *vincent.babich@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently approved information collection.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Indian tribes with designated routes, and U.S. Territories including; Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

Estimated Number of Respondents: 57 [36 States and the District of Columbia, with designated hazardous materials highway routes + 20 States/U.S. Territories without designated hazardous materials highway routes + 1 Indian tribe with a designated route = 57].

Estimated Time per Response: 15 minutes.

Expiration Date: April 30, 2017.

Frequency of Response: Once every two years.

Estimated Total Annual Burden: 7 hours [57 annual respondents × 1 response per 2 years × 15 minutes per response/60 minutes per response = 7.125 hours rounded to 7 hours].

Background: The data for the Transportation of Hazardous Materials; Highway Routing ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, ''shall update and publish periodically a list of currently effective hazardous material highway route designations.''

In 49 CFR 397.73, the FMCSA requires that each State and Indian tribe, through its routing agency, provide information identifying new, or changes to existing, hazardous materials routing designations within its jurisdiction within 60 days after their establishment (or 60 days of the change). That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register**.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform it's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: November 17, 2016.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–28682 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0407]

Agency Information Collection Activities; New Information Collection Request: National Consumer Complaint Database

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This new collection of information is for the National Consumer Complaint Database (NCCDB), which is an online interface allowing consumers, drivers and others to file complaints against unsafe and unscrupulous companies and/or their employees, including shippers, receivers and transportation intermediaries, depending on the type of complaint. These complaints cover a wide range of activities, including but not limited to driver harassment, coercion, movement of household goods, financial responsibility instruments for brokers and freight forwarders, and Americans with Disability Act (ADA) complaints.

DATES: We must receive your comments on or before January 30, 2017.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0407 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. 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 below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

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

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. James Dubose, Department of

Transportation, Federal Motor Carrier Safety Administration, Commercial Enforcement and Investigations Division/MC–ECC, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 215–656–7251, email: *james.dubose@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FMCSA maintains online information and resources to assist drivers, others in the motor carrier industry and members of the general public in filing safety complaints regarding household goods (HHG) carriers, hazardous material (HM) carriers, property carriers, cargo tank facilities, and passenger carriers. There is also information pertaining to the filing of consumer complaints, particularly regarding HHG transportation and ADA compliance.[1] This online interface is known as the National Consumer Complaint Database (NCCDB). When effectively applied, the NCCDB can contribute to safer motor carrier operations on our nation's highways and improved consumer protection.

The NCCDB grew out of a telephone hotline known as the Safety Violation Hotline Service. Congress mandated this hotline in Section 4017 of the ''Transportation Equity Act of the 21st Century,'' Public Law 105–178, 112 Stat. 107, June 9, 1998. The Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748, December 9, 1999, created the Federal Motor Carrier Safety Administration and section 213 of the Act expanded the Safety Violation Hotline Service to include a 24-hour operation. On August 10, 2005, Congress enacted the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144. Section 4214 of SAFETEA–LU requires DOT to create a system to record and log aggregate complaint information regarding violations of the Federal Motor Carrier Safety Regulations.

The NCCDB fulfills the requirements of these mandates. Complaints will be accepted through the NCCDB in connection with other statutory mandates, including, but not limited to, protection of drivers against harassment and coercion under sections 32301(b) and 32911, respectively, of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405. The NCCDB will also accept complaints from interested parties regarding third party intermediaries (brokers and freight forwarders) and their associated financial responsibility instruments.

Title: National Consumer Complaint Database.

OMB Control Number: 2126–00XX.

Type of Request: New information collection request.

Respondents: Consumers, Drivers, and Other Participants in the Motor Carrier Industry.

Estimated Number of Respondents: 4,299.

Estimated Time per Response: 15 minutes.

Expiration Date: N/A. This is a new ICR.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,075.

ADA/Bus—Service

60.5 burden hours (242 responses × 15 minutes to complete complaint = 60.5)

Truck/Drivers

305 burden hours (1,219 responses × 15 minutes to complete complaint = 305)

Consumers

709.5 burden hours (2,838 responses × 15 minutes to complete complaint = 709.5)

There is no complaint history for the recently added coercion and harassment complaint categories, or for complaints regarding financial responsibility instruments for brokers and/or freight forwarders. This data will be collected and included in future renewals for the NCCDB.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: November 22, 2016.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–28745 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–EX–P

[1] The U.S. Department of Transportation (DOT) maintains reporting and other requirements for over-the-road buses (OTRBs) under its Americans with Disabilities Act (ADA) regulations. (For a complete listing of the DOT's ADA regulations, see 49 CFR parts 37 and 38.)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0233]

Solicitation of Proposals for Designation of Automated Vehicle Proving Grounds Pilot

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

ACTION: Notice of intent to designate proving grounds.

SUMMARY: It is the policy of the U.S. Department of Transportation (''DOT'' or the ''Department'') to foster the safe deployment of advanced automated vehicle technologies to achieve national goals while understanding the long-term societal and ethical impacts that these technological advancements may impose. To further this understanding, the DOT is requesting proposals from applicants to form an initial network of multiple proving grounds, focused on the advancement of automated vehicle technology. These entities will be designated as a Community of Practice to develop and share best practices around the safe testing, demonstration and deployment of automated vehicle technology.

DATES: Proposals must be submitted by 11:59 p.m. EST on December 19, 2016.

ADDRESSES: Final proposals must not exceed 15 pages in length, and must be submitted electronically to: *automation@dot.gov*.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please send inquiries to *automation@dot.gov*.

SUPPLEMENTARY INFORMATION: The Department is requesting applications to be designated as USDOT Automated Vehicle Proving Grounds. Please read this notice in its entirety so that you have all the information to determine whether you would like to submit a proposal.

DESCRIPTION: Benefits of Designation as a USDOT Automated Vehicle Proving Ground: Automated and connected vehicle technologies are advancing, but the pace of innovation can accelerate through the safe testing and deployment of vehicles on closed tracks, on campuses and on limited roads. For this purpose, the DOT is seeking applications from eligible entities that would like to be designated USDOT Automated Vehicle Proving Grounds. The Department anticipates that the designation will encourage new levels of public safety while contributing to a strong innovative foundation able to transform personal and commercial

mobility and open new doors to disadvantaged people and communities. The designated proving grounds will collectively form a Community of Practice around safe testing and deployment. This group will openly share best practices for the safe conduct of testing and operations as they are developed, enabling the participants and the general public to learn at a faster rate and accelerating the pace of safe deployment. Designated Proving Grounds must establish a Designated Safety Officer responsible for their safety management plan and commit to sharing their approaches to safety and non-proprietary/non-confidential safety data generated though testing and operation.

DESIGNATION DECISIONS: The Secretary of Transportation will make all designations under this notice. A designation as a USDOT Automated Vehicle Proving Ground is not an award of Federal financial assistance.

ELIGIBILITY INFORMATION: The following entities are eligible for designation as a USDOT Automated Vehicle Proving Ground. Individuals are not eligible for designation under this notice. Facilities will not be limited to a predetermined size, number or variety of domains/capabilities. The Department actively encourages the inclusion of minority institutions//businesses (*e.g.,* small and disadvantaged businesses). Eligible entities include:

(1) Test tracks or testing facilities
(2) Race tracks
(3) Cities/urban cores
(4) Highway corridors
(5) Campuses (corporate or academic)

SELECTION CRITERIA: The Secretary of Transportation will make all designations. Selections will be based on meeting the mandatory criteria and the level of ability of the applicant to meet one or more of the other criteria identified below:

Mandatory Criteria

- A Designated Safety Officer responsible for the entity's safety management plan and who will participate in the Community of Practice's regular quarterly meeting of Safety Officers.
- Commitment to sharing the entity's approaches to safety and safety data generated through testing and operation.

Proposed Contributions

- The extent to which the applicant meets the above eligibility and administers an established automated vehicle program, either independently or through a partnership.
- The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate mobility challenges through the testing and deployment of automated vehicle technology.
- The applicant's proposed contributions to the Community of Practice. Examples include established safety management plans, access to testing data, engagement with stakeholders or ability to generate results that have broad applicability.
- As part of participation in the Community of Practice, Designated Proving Grounds applicant's ability and willingness to maintain a working relationship with the Department's relevant research program offices. The application should describe this proposed relationship, including aspects such as potential participation in conferences, meetings, joint research efforts, and submission of significant activity reports to the DOT on a routine basis.

Commitment to Safety

- The demonstrated capability to control risks through the implementation of robust safety precautions through a published safety management plan in all proving ground testing and operations.
- Applicant demonstrates that specific safety considerations have been met over the course of operation, including safety of proving ground personnel, safety protocols when making use of public roads, and attention to safe design, deployment, and operation of automated devices.

Research, Application and Data Sharing

- The extent to which the State or locality in which the applicant is located can provide applicable solutions for the broader region and surrounding corridor for improved mobility through the advancement of automated vehicle technology.
- The demonstrated research and extension resources available to the applicant for carrying out activities and programs as they relate to automated vehicle advancements.
- The degree to which the applicant can disseminate results of automated vehicle research through a statewide or region-wide education program to support the national deployment of automated vehicle technology.
- A commitment to open data and sharing performance metrics and results of objective tests.

Demonstrated Investments

- In facilitating automated vehicle testing, applicants demonstrate commitment through one or more of the following:

(1) Capital improvements to the proving grounds to advance automated vehicles;

(2) Authorization for the proving grounds, either through State legislation or regulation, to address regulatory challenges associated with higher levels of automation;

(3) Testing or deployment underway to determine automated vehicle technology feasibility.

Readiness

(1) Designated facility is open for testing, or the ability of the applicant to demonstrate that the facility will be open for testing, by January 1, 2018.

(2) The facility supports testing by multiple users, or the data generated by the proving ground is shared openly to the public.

(3) Designated facility provides a Designated Point of Contact.

(4) If making use of public roads, the applicant demonstrates that it has engaged with any affected communities and can show that it is actively working with those communities to address any concerns.

Adherence to Laws, Regulations, and Federal Policy

- The degree to which the application addresses how the automated vehicle testing facility will adhere to all state and local laws and federal regulations.
- If making use of public roads, the applicant demonstrates adherence to those primary subject areas outlined in the National Highway Traffic Safety Administration's (NHTSA) policy for automated vehicles (*Federal Automated Vehicles Policy: Accelerating the Next Revolution in Roadway Safety*) for any testing or deployment of L3–L5 systems on public roads.

REVIEW AND SELECTION PROCESS: DOT will review all applications received by the deadline. The designation review and selection process consists of two phases: Eligibility & Technical Review and Senior Review. In the Eligibility & Technical Review phase, DOT staff will (1) ensure that the applicant is eligible (see Eligibility Information section) and (2) assess the applicant's ability to meet the mandatory criteria and one or more of the other Selection Criteria enumerated above. In the Senior Review phase, which includes senior leadership from DOT, specific applications may be advanced to the Secretary for selection. In making recommendations, the Senior Review team may seek to ensure an equitable geographic distribution and the inclusion of minority institutions/businesses (*e.g.,* small and

disadvantaged businesses). The Secretary selects from applications advanced by the Senior Review team for designations.

DESIGNATION NOTICE: The Secretary will announce designations by posting a list of USDOT Automated Vehicle Proving Grounds at *www.transportation.gov/*. The Department anticipates that the selection of the initial USDOT Automated Vehicle Proving Grounds will be completed during the first quarter of calendar year 2017. The Department may make additional designations on an annual basis or as deemed appropriate.

DESIGNATION AGENCY CONTACTS: For further information concerning this notice, please contact the Department via email at *automation@dot.gov,* or call Christopher Hillers at 202–366–5421.

OTHER INFORMATION: All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued in Washington, DC, on November 22, 2016.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2016–28619 Filed 11–28–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2017 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2017 apply to compensation paid in calendar year 2017.

FOR FURTHER INFORMATION CONTACT: Kathleen Edmondson, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone Number (202) 317–6798 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2017 under section 3201(b) on employees is 4.9 percent of compensation. The tier 2 tax rate for 2017 under section 3221(b) on employers is 13.1 percent of compensation. The tier 2 tax rate for 2017 under section 3211(b) on employee representatives is 13.1 percent of compensation.

Dated: November 22, 2016.

Victoria A. Judson,

Associate Chief Counsel (Tax Exempt and Government Entities).

[FR Doc. 2016–28747 Filed 11–28–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces that the Department of the Treasury's Advisory Committee on Risk-Sharing Mechanisms (''Committee'') will convene a meeting on Thursday, December 15, 2016, in Room 4121, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:30–4:30 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, December 15, 2016, from 1:30–4:30 p.m. Eastern Time.

ADDRESSES: The Advisory Committee on Risk-Sharing Mechanisms meeting will be held in Room 4121, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public, and will be held in a secured facility. Members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/dvqdsy?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=TRIA+General+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration.

Note: Online registration will close at 5:00 p.m. Eastern Time on Thursday, December 8, 2016.

2. Contact the Federal Insurance Office (FIO), at (202) 622–3220, by 5:00 p.m. Eastern Time on Thursday, December 8, 2016, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0316, or *mariam.harvey@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Baldwin, Senior Policy Analyst, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–3220 (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: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Advisory Committee on Risk-Sharing Mechanisms are invited to submit written statements by any of the following methods:

Electronic Statements

- Send electronic comments to *ACRSM@treasury.gov*.

Paper Statements

- Send paper statements in triplicate to the Advisory Committee on Risk-Sharing Mechanisms, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *www.treasury.gov/initiatives/fio* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of 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 statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is the third periodic meeting of the Advisory Committee on Risk-Sharing Mechanisms. In this meeting, the Committee will discuss issues related to whether the Terrorism Risk Insurance Program (TRIP) could be altered, and if so, the extent to which nongovernmental private reinsurance and capital markets capacity is available to replace TRIP support and the long-term viability of such support. The Committee will also discuss the formation of Subcommittees to further investigate these questions.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2016–28616 Filed 11–28–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 23, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 29, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Control Number: 1545–0004.

Type of Review: Extension without change of a currently approved collection.

Title: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Form: Form SS–8, SS–8PR.

Abstract: Form SS–8 is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses this information to make the determination.

Form SS–8PR is the Spanish version for use in Puerto Rico of form SS–8 Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. IRS uses this information to make the determination.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 148,621.

OMB Control Number: 1545–1191.

Type of Review: Extension without change of a currently approved collection.

Title: Information with Respect to Certain Foreign-Owned Corporations—IRC Section 6038A.

Abstract: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS International examiners to better audit the returns of U.S. corporations engaged in crossborder transactions with a related party.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 640,000.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–28748 Filed 11–28–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No: 2900–0619; 2900–0111; 2900–0524; 2900–0752]

Agency Information Collection Activity Under OMB Review: (Inquiry Routing & Information System (IRIS); Statement of Purchaser or Owner Assuming Seller's Loan; VA Police Officer Pre-Employment Screening Checklist; Universal Stakeholder Participation Questionnaire (uSPEQ))

AGENCY: Administration, Department of Veterans Affairs.

ACTION: Notice of Emergency OMB Extension and Emergency Clearance Requests.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the Department of Veterans Affairs (VA) is providing notice of its agency request for Emergency Extension of OMB Control Numbers 2900–0619 (Inquiry Routing & Information System (IRIS)) and 2900–0111 (Statement of Purchaser or Owner Assuming Seller's Loan (VA Form 26–6382) under Veterans Benefits Administration (VBA). VA has also requested Emergency Clearance of OMB Control Number 2900–0524 (VA Police Officer Pre-Employment Screening Checklist) and 2900–0752 (Universal Stakeholder Participation Questionnaire (uSPEQ®)) under Veterans Health Administration (VHA). Concurrent to this notice, the regular 60 and 30-day **Federal Register** Notices and PRA clearance process has been initiated for each information collection request.

DATES: This notification is published in the **Federal Register**, to post concurrent with the Public Comment Notices for each identified OMB control number on January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at 202–461–5870 or email *cynthia.harvey-pryor@va.gov*.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–28577 Filed 11–28–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0752]

Agency Information Collection Activity Under OMB Review (uSPEQ Consumer Survey Experience (Rehabilitation))

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure veterans' experience in VA's rehabilitation programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *brian.mccarthy4@va.gov*. Please refer to ''OMB Control No. 2900–0752 (uSPEQ Consumer Survey Experience (Rehabilitation))'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506 (c)(2)(A) of the PRA. With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: uSPEQ Consumer Survey Experience (Rehabilitation).

OMB Control Number: 2900–0752.

Type of Review: Extension of a currently approved collection.

Abstract: uSPEQ (pronounced you speak) survey will be used to gather input from veterans regarding their satisfaction with VA's rehabilitation programs. VA will use the data collected to continue quality improvement, informed programmatic development, and to identify rehabilitation program strengths and weaknesses.

Affected Public: Individuals or households.

Estimated Annual Burden: 32,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 384,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–28579 Filed 11–28–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Agency Information Collection Activity Under OMB Review (Police Officer Pre-Employment Screening Checklist)

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Operations, Security, and Preparedness (OSP), Department of Veterans Affairs is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an applicant's qualification and suitability as a VA police officer.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2017.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Harry Brist, Office of Operations, Security, and Preparedness, Department of Veterans Affairs, LETC, 2200 Fort Root Drive, Little Rock, AR 72114 or email: *harry.brist@va.gov*.

Please refer to ''OMB Control No. 2900–0524 (Police Officer Pre-Employment Screening Checklist)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, *cynthia.harvey-pryor@va.gov,* (202) 461–5870 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSP invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSP's functions, including whether the information will have practical utility; (2) the accuracy of OSP'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Police Officer Pre-Employment Screening Checklist (VA Form 0120).

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel complete VA Form 0120 to document pre-employment history and conduct background checks on applicants seeking employment as VA police officers. VA will use the data collected to determine the applicant's

qualification and suitability to be hired as a VA police officer.

Affected Public: State, Local, or Tribal Government.

Estimated Annual Burden: 250.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–28580 Filed 11–28–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Agency Information Collection Activity Under OMB Review (Statement of Purchaser or Owner Assuming Seller's Loan)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. The holder of a vendee account which has been guaranteed by the Department of Veterans Affairs (VA) may request VA to repurchase a loan as provided in 38 CFR 36.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0111, Statement of Purchaser or Owner Assuming Seller's Loan'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, *cynthia.harvey-pryor@va.gov,* (202) 461–5870 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Purchaser or Owner Assuming Seller's Loan.

OMB Control Number: 2900–0111 (VA Form 26–6382).

Type of Review: Extension of a currently approved collection.

Abstract: Under Title 38, U.S.C., section 3702, authorizes collection of this information to help determine the release of liability and substitution of entitlement. 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.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary:

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–28578 Filed 11–28–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Tuesday,

No. 229 November 29, 2016

Part II

Department of Education

34 CFR Parts 200 and 299

Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 299

RIN 1810–AB27

[Docket ID ED–2016–OESE–0032]

Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing programs under title I of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015. The Secretary also updates the current ESEA general regulations to include requirements for the submission of State plans under ESEA programs, including optional consolidated State plans.

DATES: These regulations are effective January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Meredith Miller, U.S. Department of Education, 400 Maryland Avenue SW., room 3C106, Washington, DC 20202–2800.

Telephone: (202) 401–8368 or by email: *Meredith.Miller@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: On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. The ESSA builds on ESEA's legacy as a civil rights law and seeks to ensure that every child, regardless of race, income, background, or where they live has the opportunity to obtain a high-quality education. Through the reauthorization, the ESSA made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I.

In particular, the ESSA significantly modified the accountability requirements of the ESEA. Whereas the ESEA, as amended by the NCLB, required a State educational agency (SEA) to hold schools accountable based solely on results on statewide assessments and one other academic indicator, the ESEA, as amended by the ESSA, requires each SEA to have an accountability system that is State-determined and based on multiple indicators, including, but not limited to, at least one indicator of school quality or student success and, at a State's discretion, an indicator of student growth. The ESSA also significantly modified the requirements for differentiating among schools and the basis on which schools must be identified for further comprehensive or targeted support and improvement. Additionally, the ESSA no longer requires a particular sequence of escalating interventions in title I schools that are identified and continue to fail to make adequate yearly progress (AYP). Instead, it gives SEAs and local educational agencies (LEAs) discretion to determine the evidence-based interventions that are appropriate to address the needs of identified schools.

In addition to modifying the ESEA requirements for State accountability systems, the ESSA also modified and expanded upon the ESEA requirements for State and LEA report cards. The ESSA continues to require that report cards be concise, presented in an understandable and uniform format, and, to the extent practicable, in a language that parents can understand, but now also requires that they be developed in consultation with parents and that they be widely accessible to the public. The ESSA also requires that report cards include additional information that was not required to be included on report cards under the ESEA, as amended by the NCLB, such as information regarding per-pupil expenditures of Federal, State, and local funds; the number and percentage of students enrolled in preschool programs; where available, the rate at which high school graduates enroll in postsecondary education programs; information regarding the number and percentage of English learners achieving English language proficiency (ELP), and certain data collected through the Civil Rights Data Collection (CRDC). In addition, the ESSA requires that report cards include certain information for subgroups of students for which information was not previously required to be reported, including homeless students, students in foster care, and students with a parent who is a member of the Armed Forces.

Further, the ESEA, as amended by the ESSA, authorizes an SEA to submit, if it so chooses, a consolidated State plan or consolidated State application for covered programs, and authorizes the Secretary to establish, for each covered program, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

On May 31, 2016, the Secretary published a notice of proposed rulemaking (NPRM) for the title I, part A program and general ESEA regulations in the **Federal Register** (81 FR 34539). We issue these regulations to provide clarity and support to SEAs, LEAs, and schools as they implement the ESEA, as amended by the ESSA—particularly, the ESEA requirements regarding accountability systems, State and LEA report cards, and consolidated State plans—and to ensure that key requirements in title I of the ESEA, as amended by the ESSA, are implemented consistent with the purpose of the law: ''to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.''

Summary of the Major Provisions of This Regulatory Action: The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NPRM. The rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this document.

- Section 200.12 has been revised to clarify that if an authorized public chartering agency, consistent with State charter school law, acts to decline to renew or to revoke a charter for a particular charter school, the decision of the agency to do so supersedes any notification from the State that the school must implement a comprehensive or targeted support and improvement plan under §§ 200.21 or 200.22.
- The Department made a number of changes to § 200.13, which describes a State's long-term goals and measurements of interim progress for achievement, graduation rates, and progress toward ELP for English learners:

—Section 200.13(a) is revised to clarify that long-term goals and measurements of interim progress for academic achievement must measure the percentage of students attaining grade-level proficiency on the State's annual assessments in reading/language arts and mathematics based on the State's academic achievement standards under section 1111(b)(1) of the ESEA, as amended by the ESSA, including alternate academic achievement standards for students

with the most significant cognitive disabilities as defined by the State under section 1111(b)(1)(E) of the ESEA.

—Section 200.13(c) requires States to establish long-term goals and measurements of interim progress for increases in the percentage of English learners making annual progress toward attaining ELP using a uniform procedure, applied to all English learners in a consistent manner, that establishes applicable timelines for English learners sharing particular characteristics to attain ELP after a student's identification and student-level targets within that timeline. The final rule is revised to require each State, in its State plan, to describe how it sets research-based, student-level targets; a rationale for a State-determined maximum number of years in its uniform procedure; and the applicable timelines over which English learners sharing particular characteristics are expected to attain ELP.

• In § 200.14, which describes the requirements related to the five indicators—Academic Achievement, Academic Progress, Graduation Rate, Progress in Achieving English Language Proficiency, and School Quality or Student Success—within the statewide accountability system, the final regulations include the following significant changes:

—Section 200.14(b)(1)(i) and (ii) is reorganized and revised to clarify that the Academic Achievement indicator (1) must include a grade-level proficiency measure based on the State's academic achievement standards under section 1111(b)(1) of the ESEA, including alternate academic achievement standards for students with the most significant cognitive disabilities as defined by the State under section 1111(b)(1)(E) of the ESEA; (2) may include measures of student performance below or above the proficient level (*e.g.,* in an achievement index), so long as a school receives less credit for the performance of a student who is not yet proficient than for the performance of a student who is proficient, and the credit a school receives for the performance of a more advanced student does not fully compensate for the performance of a student that is not yet proficient; and (3) does not require State assessments in reading/language arts and mathematics that are ''equally measured.''

—Section 200.14(b)(1) and (3) is revised to ensure that the Academic Achievement and Graduation Rate indicators are based on the corresponding long-term goals under § 200.13.

—Section 200.14(c)(4) is revised to remove the requirement that a given measure may be used no more than once across the accountability indicators.

—Section 200.14(d) is revised to clarify that States must demonstrate that measures in the Academic Progress and School Quality or Student Success indicators are supported by research that high performance or improvement on such measures is likely to increase student learning (*e.g.,* grade point average, credit accumulation, or performance in advanced coursework), or—for measures at the high school level—graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.

• Section 200.15, which describes the requirements related to participation in statewide assessments and the annual measurement of achievement, is revised as follows:

—Section 200.15(a) is revised to clarify the distinction between the statutory requirement for States to administer assessments to *all* students and the statutory requirement for States to measure, for accountability purposes, whether *at least 95 percent* of all students and of each subgroup of students participated in State assessments.

—Section 200.15(b)(2)(iv) is revised so that a State may develop and use a State-determined action or set of actions that is sufficiently rigorous to improve the school's participation rate in order to factor the statutory requirement for 95 percent participation on statewide assessments into its accountability system, rather than requiring such actions to be equally rigorous and result in a similar outcome as other possible options.

• In § 200.16, which describes the requirements related to inclusion of subgroups of students, the final regulations include the following significant changes:

—Section 200.16(b) is revised to permit a student previously identified as a child with a disability to be included in the children with disabilities subgroup for up to two years following the year in which the student exits special education services, for the limited purpose of measuring indicators that use results from required State assessments under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA. A State choosing to include former children with disabilities for these indicators must include all such students, for the same period of time, and must also include all such students in determining whether the subgroup meets the State's n-size for purposes of calculating any such indicator.

—Section 200.16(c)(1) is revised to allow former English learners to be included in the English learner subgroup for up to four years following the year in which the student achieves English language proficiency consistent with the standardized, statewide exit procedures, when measuring any indicator under § 200.14(b) that uses data from required assessments under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA.

• Section 200.17 is revised to clarify that if a State proposes to use an n-size above 30 students, the justification it provides in its State plan must include data on the number and percentage of schools that will not be held accountable for the performance of each subgroup of students described in § 200.16(a) compared to such data if the State had selected an n-size of 30.

• Within section 200.18, the Department made the following substantial revisions from the NPRM, primarily to better align requirements for differentiation in § 200.18 with requirements for identification of schools in § 200.19:

—Section 200.18 is renamed to clarify all of the components within annual meaningful differentiation of schools: ''performance levels, data dashboards, summative determinations, and indicator weighting.''

—Section 200.18(a)(2)–(3) describes the requirements for each State to describe a school's level of performance on each accountability indicator, from among three performance levels that are distinct, aligned to a State's long-term goals, and clear and understandable to the public. The final rule clarifies that the levels must also be discrete, indicating that reporting on a continuous measure (*e.g.,* scale scores) would not meet the requirement, and that a data ''dashboard'' is an example of a way for a State to report performance levels for a school.

—Section 200.18(a)(4) specifies that a State must provide each school with a single summative ''determination,'' from among at least three categories, based on all of the accountability

indicators. We are revising the final regulation to clarify that a State may either use (1) determinations that include the two categories of schools required to be identified in § 200.19 (*i.e.,* schools identified for comprehensive support and improvement and targeted support and improvement) and a third category of unidentified schools, or (2) determinations distinct from the categories of schools described in § 200.19. We are also revising § 200.18(a)(4) to clarify that the summative determination must meaningfully differentiate between schools based on differing performance on the indicators and provide information on a school's overall performance in a clear and understandable manner on annual report cards.

—Section 200.18(a)(6) is revised to clarify that annual meaningful differentiation must inform the State's methodology to identify schools under § 200.19, including identification of consistently underperforming subgroups of students.

—Section 200.18(c)(3) is revised to require each State to demonstrate that a school with a consistently underperforming subgroup will receive a lower summative determination than it would have otherwise received if the school had no consistently underperforming subgroups.

—Section 200.18(d)(1)(ii) is revised to require each State to demonstrate in its State plan that schools that are low-performing on indicators afforded ''substantial'' weight are more likely to be identified under § 200.19.

—Section 200.18(d)(1)(iii) incorporates provisions from the proposed State plan regulations to clarify that a State may develop and propose to use alternate methods for differentiation and identification under §§ 200.18–200.19 in order to ensure all public schools are included, such as schools in which no grades are assessed, schools with variant grade configurations, small schools, newly opened schools, and schools designed to serve special populations of students (*e.g.,* newcomer English learners, students receiving alternative programming in alternative educational settings, and students living in local institutions for neglected or delinquent children, including juvenile justice facilities).

• The Department made several changes to § 200.19, primarily for clarification or to align requirements with other sections of the regulations:

—Section 200.19(a)(1) is revised to clarify that each State must identify the lowest performing five percent of all title I schools, not five percent of title I schools at each grade span, and to make conforming changes based on the significant changes under § 200.18.

—Section 200.19(a)(3) is revised to allow each State to determine how long a school with a low-performing subgroup identified for targeted support and improvement that also must receive additional targeted support under § 200.19(b)(2) may implement a targeted support plan before the State must determine that such a school has not met the State's exit criteria and must, if it receives title I funds, be identified for comprehensive support and improvement. A corresponding change is made to § 200.22(f)(2).

—Section 200.19(b)(2) is revised to clarify that a State must use the same process to identify schools with individual subgroups performing at or below the performance of all students in the lowest-performing five percent of title I schools as it uses to identify the lowest-performing five percent of title I schools for comprehensive support and improvement.

—Section 200.19(c)(1) is revised to allow a State, in order to identify schools with one or more consistently underperforming subgroups, to consider a school's performance among each subgroup of students in the school over more than two years, if the State demonstrates that a longer timeframe will better support low-performing subgroups of students to make significant progress in achieving long-term goals and measurements of interim progress in order to close statewide proficiency and graduation rate gaps, consistent with section 1111(c)(4)(A)(i)(III) of the ESEA, as amended by the ESSA, and § 200.13.

—Section 200.19(c)(3)(i) is revised to ensure that when a State chooses a definition for consistently underperforming subgroups that considers a subgroup's performance on the State's measurements of interim progress or State-designed long-term goals, the SEA also considers a schools' performance on the indicators for which goals and measurements of interim progress are not required, consistent with the requirement that the State's definition be based on all indicators.

—Section 200.19(c)(3) is revised to remove options for a State to define a consistently underperforming subgroup of students based on indicator performance levels, a single measure within an indicator, or performance gaps between the subgroup and State averages as described in proposed § 200.19(c)(3)(ii)–(iv).

—Section 200.19(d)(1)(i)–(ii) is revised to allow a State to delay identification of schools for comprehensive support and improvement and schools with a low-performing subgroup for targeted support and improvement that also must receive additional targeted support until no later than the beginning of the 2018–2019 school year.

—Section 200.19(d)(1)(iii) is revised to allow a State to delay identification of schools with consistently underperforming subgroups for targeted support and improvement until no later than the beginning of the 2019–2020 school year.

—Section 200.19(d)(2) is revised to clarify that for each year in which a State must identify schools for comprehensive or targeted support and improvement, it must do so using data from the preceding school year, except that the State may use adjusted cohort graduation rate data from the year immediately prior to the preceding school year.

• The Department made revisions to § 200.20 for clarity, including:

—Section 200.20(a) is revised to use consistent terminology for how States can produce averaged results by combining data across both school years and grades within a school and to clarify that a State combining data must sum the total number of students in each subgroup of students described in § 200.16(a)(2) across all school years when calculating a school's performance on each indicator under § 200.14 and determining whether the subgroup meets the State's minimum number of students described in § 200.17(a)(1).

—Section 200.20(a) is revised to clarify the limited purposes in the accountability system for which States may average school-level data across school years.

• Within sections §§ 200.21 and 200.22, Comprehensive Support and Improvement and Targeted Support and Improvement, the Department made the following substantial revisions from the NPRM, primarily to strengthen and clarify the requirements for school improvement:

—Section 200.21(c)(4) is revised to require that an LEA, in conducting a school-level needs assessment for each school within the LEA identified for comprehensive support and improvement, consider a school's

unmet needs, including with respect to students, school leadership and instruction staff, quality of the instructional program, family and community involvement, school climate, and distribution of resources.

—Section 200.21(d)(1) is revised to clarify that for LEAs affected by section 8538 of the ESEA, the LEA must develop school improvement plans in partnership with Indian tribes, among other required stakeholders.

—Section 200.21(d)(1), and similar requirements in §§ 200.15(c)(1)(i) and 200.22(c)(1), is revised to encourage the involvement of students, as appropriate, in developing school improvement plans.

—Section 200.21(d)(3) is revised to clarify examples of interventions that an LEA may consider implementing in an identified school and to clarify optional State authorities for State-approved lists of interventions or State-determined interventions, further described in § 200.23(c).

—Section 200.21(d)(3)(vi) is revised to clarify that differentiated improvement activities that utilize evidence-based interventions may be used in high schools that primarily serve students returning to education or who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet State high school graduation requirements.

—Sections 200.21(d)(4) and 200.22(c)(7)(i) are revised to require that LEAs, in identifying and addressing resource inequities in schools identified for comprehensive support and improvement, or schools with a low-performing subgroup identified for targeted support and improvement that also must receive additional targeted support, respectively, must review access to advanced coursework, access to full-day kindergarten programs and preschool programs, and access to specialized instructional support personnel.

—Consistent with the revisions to § 200.21(d)(3)(vi), § 200.21(g) is revised to clarify State discretion to exclude very small high schools from developing and implementing a support and improvement plan if such schools are identified as a low graduation rate high school under § 200.19(a)(2).

—Sections 200.21(f) and 200.22(f) are revised to require that each SEA make its State-established exit criteria publicly available.

• The Department has revised § 200.23 as follows:

—Section 200.23(a) is revised to clarify that in periodically reviewing resources available for each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement, the State must consider each of the resources in its review that is listed in § 200.21(d)(4)(i)(A)–(E) and consider resources in such LEAs as compared to all other LEAs in the State and in schools in those LEAs as compared to all other schools in the State.

—Section 200.23(c)(1) is revised to list examples of additional actions a State may take to initiate improvement at the LEA level, or, consistent with State charter school law, in an authorized public chartering agency, that serves a significant number or percentage of schools identified for comprehensive support and improvement and that are not meeting exit criteria or a significant number or percentage of schools in targeted support and improvement.

—Section 200.23(c)(1) is revised to clarify that any action to revoke or non-renew a school's charter must be taken in coordination with the applicable authorized public chartering agency and be consistent with both State charter school law and the terms of the school's charter.

—Section 200.23(c)(3) is revised to clarify the distinction between this provision and a related provision in § 200.23(c)(2). The final regulations give States flexibility to establish evidence-based interventions for use by LEAs and schools identified for support and improvement either by creating lists of State-approved, evidence-based interventions for use in any identified school, or by developing their own alternative evidence-based interventions that may be used specifically in comprehensive support and improvement schools.

• The Department has made the following significant changes to § 200.24, which describes requirements for school improvement funding under section 1003 of the ESEA:

—Section § 200.24(c)(2)(ii) is revised to clarify that a State may award a grant of less than the minimum award size if the State determines that a smaller amount is appropriate based on the school's enrollment, identified needs, selected evidence-based interventions, and other relevant factors described in the LEA's application.

—Section 200.24(c)(4)(iii)(A) is revised to require that a State consider, in determining strongest commitment, both the proposed use of evidence-based interventions that are supported by the strongest level of evidence available, and whether the evidence-based interventions are sufficient to support the school in making progress toward meeting the applicable exit criteria under §§ 200.21 or 200.22.

• The Department revised § 200.30 for clarity, including as follows:

—Section 200.30(e) is revised to provide for a State to delay inclusion of per-pupil expenditure data on its report card until no later than June 30 following the December 31 deadline for reporting all other information required under section 1111(h) of the ESEA, as amended by the ESSA.

—Section 200.30(e)(3)(ii) is revised to clarify that a State requesting a one-time, one-year extension of the December 31 deadline for disseminating report cards must submit a plan and timeline for how it will meet the December 31 deadline for report cards that include information from the 2018–2019 school year.

—Section 200.30(f)(1)(iv) clarifies that students in the subgroup of ''student with a parent who is a member of the Armed Forces'' includes students whose parents are on full-time National Guard duty. Further, § 200.30(f)(1)(iv)(C) defines full-time National Guard duty.

• The Department revised § 200.31 for clarity, including as follows:

—Section 200.31(b)(3) removes the page limit requirement on the LEA overview for each school served by the LEA.

—Section 200.31(e) is revised to provide for an LEA to delay inclusion of per-pupil expenditure data until no later than June 30 following the December 31 deadline for reporting all other information required under section 1111(h) of the ESEA, as amended by the ESSA.

• The Department revised § 200.34, which provides the requirements on how to calculate the adjusted cohort graduation rate, including the following significant changes:

—Section 200.34(a)(3)(iii) is revised to clarify the requirements for removing a student entering a prison or juvenile justice facility from a sending school's cohort.

—Section 200.34(a)(5) is added to clarify that a State must include students with the most significant cognitive disabilities who receive a State-defined alternate diploma in the calculation of the adjusted cohort

graduation rate in the year in which they exit, and describes how they should be treated in the numerator and the denominator.

—Section 200.34(c)(2) is revised to clarify that a diploma based on meeting a student's Individualized Education Program (IEP) goals is considered a lesser credential.

—Section 200.34(d)(2) is revised to remove language limiting an extended-year graduation rate to seven years.

—Section 200.34(e)(2) is added to describe the criteria a State must use to include students in the following subgroups in the graduation rate calculation: English Learners, children with disabilities, children who are homeless, and children who are in foster care.

—Section 200.34(e)(f) has been removed and revised requirements have been placed in § 200.34(a)(5).

• The Department has revised § 200.35 for clarity, including:

—Section 200.35(a) and (b) has been revised to clarify that State and LEA report cards must report the total current expenditures that were not reported in school-level per-pupil expenditure figures.

—Section 200.35(a) and (b) has been revised to clarify that State and LEA report cards must, when reporting per-pupil expenditures, include with State and local funds all Federal funds intended to replace local tax revenues.

—Section 200.35(c)(2) has been revised to clarify the denominator used for purposes of calculating per-pupil expenditures must be the same figure as reported to the National Center for Education Statistics (NCES) on or about October 1.

• The Department made a number of changes to § 299.13, which provides an overview of the State plan requirements.

—Section 299.13(c)(ii) is revised to require that an SEA ensures that LEAs will collaborate with local child welfare agencies to develop and implement clear written procedures that ensure children in foster care receive transportation to and from their school of origin when in their best interest.

—Section 299.13(c)(iii) was moved from proposed § 299.18(c) to require an SEA to assure that it will publish and update specific educator equity information and data regarding ineffective, out-of-field, and inexperienced teachers.

—Section 299.13(d)(3) is revised to allow an SEA to request a 3 year extension, rather than the 2 year extension originally proposed, to calculate statewide rates of educator equity data using school-level data when meeting the requirements of § 299.18(c)(3)(i).

• The Department made the following changes in § 299.14, which describes the framework and the requirements when submitting a consolidated State plan:

—Section 299.14(c) was added to include consolidated State plan assurances on coordination of federal programs, challenging academic standards and assessments, State support and improvement for low-performing schools, participation for private school children and teachers, and appropriate identification of children with disabilities. With the exception of the assurance regarding participation for private school children and teachers, the required assurances were previously required descriptions in the proposed consolidated State plan requirements, with revisions made in order to reduce unnecessary burden on each SEA.

• The Department made the following changes in § 299.15, which describes the requirements related to consultation on the consolidated State plan:

—Section 299.15 is revised to include two additional stakeholder groups with whom an SEA must consult in developing its consolidated State plan—representatives of private school students and early childhood educators and leaders—and to clarify that the stakeholder groups listed in § 299.15(a) represent the minimum stakeholder groups with whom an SEA is expected to consult.

—Section 299.15 is further revised such that § 299.15(b) no longer includes the proposed requirement that each SEA describe its plans for coordinating across Federal educational laws. Section 299.15(b) now includes the performance management requirements which only require an SEA to describe its performance management system once, and not for each component of its consolidated State plan.

• The Department made a number of changes to § 299.16, which describes the requirements related to challenging academic assessments, including:

—The final regulations do not require a State that elects to submit a consolidated State plan to provide evidence in such plan related to challenging academic content standards and aligned academic achievement standards, alternate academic achievement standards, as applicable, or ELP standards but rather, in § 299.14(c)(2), requires the SEA to assure that it will meet the statutory requirements. Specifically, the assurance in § 299.14(c)(2) clarifies that a State that elects to submit a consolidated State plan will meet the statutory requirements in section 1111(b)(1)(A)–(F) and 1111(b)(2) of the Act, including requirements related to alternate academic achievement standards and alternate assessments for students with the most significant cognitive disabilities and ELP standards and assessments.

—The final regulations do not require an SEA that elects to submit a consolidated State plan to provide evidence in such plan related to a State's academic assessments, including providing the names of such assessments and evidence that such assessments meet the requirements under section 1111(b)(2) of the ESEA and applicable regulations. Rather, the SEA must provide an assurance under § 299.14(c)(2) that it will meet the statutory requirements related to a State's academic assessments.

—Proposed § 299.16(b)(7) has been removed, and the Department will not require an SEA to describe in its consolidated State plan how it will use funds under section 1201 of the ESEA.

• The Department has revised some provisions in § 299.17 for clarification and alignment with revisions to other provisions in the final regulations as follows:

—Section 299.17(a) clarifies that, with respect to its State-designed long-term goals under § 200.13, an SEA must both provide its baseline, measurements of interim progress, and long-term goals, and describe how it established its long-term goals and measurements of interim progress.

—Section 299.17(b)(5)(iv) clarifies that an SEA must describe, among other elements as noted in § 299.17(b), how its methodology for differentiating all public schools in the State meets the requirements under § 200.18(c)(3) and (d)(1)(ii).

—Section 299.17(b)(8) incorporates the requirements for an SEA to describe how it includes all public schools in the State in its accountability system if it is different from the methodology described in § 299.17(b)(5), consistent with § 200.18(d)(1)(iii).

—Section 299.17(d)(2) is revised to include a description of how an SEA will provide technical assistance to

each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement, including how it will provide technical assistance to LEAs to ensure the effective implementation of evidence-based interventions, consistent with § 200.23(b).

—Section 299.17(d)(4) is revised to require an SEA to describe how it will periodically review, identify, and, to the extent practicable, address resources available in LEAs serving a significant number or percentage of comprehensive or targeted support and improvement schools consistent with § 200.23(a).

• The Department made a number of changes in § 299.18, which provides the requirements related to supporting excellent educators as follows:

—Section 299.18(a) is amended to clarify that an SEA need only describe the State's system of certification and licensure, its strategies to improve educator preparation programs, and its strategies for professional growth and improvements for educators that addresses induction, development, compensation, and advancement if it intends to use Federal funds for these purposes.

—Section 299.18(b) is amended to remove the list of student subgroups that was provided in proposed § 299.18(b)(2).

—Section 299.18(c) is amended to clarify that an SEA must describe whether there are differences in the rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers.

—Section 299.18(c)(5) is revised to clarify that an SEA must identify likely causes of the most significant differences in the rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers.

—Section 299.18(c)(5)(ii) is revised to clarify that an SEA must prioritize strategies to address the most significant differences in the rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers.

—Section 299.18(c)(5)(iii) is revised so that an SEA must include its timeline and interim targets for eliminating any differences in the rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers.

• The Department made a number of changes in § 299.19, which provides the requirements for an SEA to describe how it will ensure a well-rounded and supportive education for all students, including the following:

—Section 299.19(a)(1) is amended to clarify that State must describe use of title IV, part A funds and funds from other included programs, including strategies to support the continuum of a student's preschool-12 education and to ensure all students have access to a well-rounded education. Such description must include how the SEA considered the academic and non-academic needs of the subgroups of students identified in § 299.19(a)(1)(iii).

—Section 299.19(a)(2) is revised to clarify that a State need only describe its strategies to support LEAs to improve school conditions for student learning, effectively use technology, and engage families, parents, and communities if the State uses title IV, part A funds or funds from one or more of the included programs for such activities.

—Section 299.19(a)(2) removes the requirement for a State to describe how it will ensure the accurate identification of English learners. Section 299.19(b)(4) retains the requirement for each SEA to describe its standardized entrance and exit procedures for English learners.

—Section 299.19(b)(3) is revised to include program-specific requirements for title I, part D that requires each SEA to provide a plan for assisting the transition of children and youth between correctional facilities and locally operated programs and a description of the program objectives and outcomes that will be used to assess the effectiveness of the program.

Please refer to the *Analysis of Comments and Changes* section of this preamble for a detailed discussion of the comments received and any changes made in the final regulations.

Costs and Benefits: The Department believes that the benefits of this regulatory action outweigh any associated costs to SEAs and LEAs, which may be financed with Federal grant funds. These benefits include a more flexible, less complex and costly accountability framework for the implementation of the ESEA, as amended by the ESSA, that respects State and local decision-making; the efficient and effective collection and dissemination of a wide range of education-related data that will inform State and local decision-making; and an optional, streamlined consolidated application process that will promote the comprehensive and coordinated use of Federal, State, and local resources to improve educational outcomes for all students and all subgroups of students. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits, including changes in estimated costs in response to public comment. 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.

Public Comment: In response to our invitation to comment in the NPRM, 21,609 parties submitted comments on the proposed regulations.

We discuss substantive issues under the sections of the proposed regulations to which they pertain, with the exception of a number of cross-cutting issues, which are discussed together under the heading ''Cross-Cutting Issues.'' 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 regulations or that were otherwise outside the scope of the regulations, including comments that raised concerns pertaining to particular sets of academic standards or the Department's authority to require a State to adopt a particular set of academic standards, as well as comments pertaining to the Department's regulations on statewide assessments.

Tribal Consultation: The Department held four tribal consultation sessions on April 24, April 28, May 12, and June 27, 2016, pursuant to Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). The purpose of these tribal consultation sessions was to solicit tribal input on the ESEA, as amended by the ESSA, including input on several changes that the ESSA made to the ESEA that directly affect Indian students and tribal communities. The Department specifically sought input on: The new grant program for Native language Immersion schools and projects; the report on Native American language medium education; and the report on responses to Indian student suicides. The Department announced the tribal consultation sessions via listserv emails and Web site postings on *http://www.edtribalconsultations.org/.*

During the consultation session held on June 27, 2016, which was held during the public comment period, the attendees discussed a range of topics

pertaining to the ESEA, as amended by the ESSA, many of which related to provisions and titles of the law that fall outside the scope of these regulations. We do not address those comments in these regulations, but we are continuing to consider them in accordance with the Department's Tribal Consultation Policy, which is available at: *http://www.edtribalconsultations.org/documents/TribalConsultationPolicyFinal2015.pdf.*

A number of participants at the June 27, 2016 consultation session provided input pertaining to these regulations. For example, a number of participants expressed concerns about the consultation, or lack of consultation, conducted by States and districts with local tribes. Participants wished to be more involved in the development of State and local policies that affect Native students. A few participants expressed specific concerns that the proposed regulation regarding the minimum number of students that must be in a subgroup for that subgroup to be included in accountability determinations would not ensure that Native students were included in accountability determinations to the maximum extent possible.

The Department considered the input provided during the first three consultation sessions in developing the proposed requirements. We considered input from the June 27, 2016 tribal consultation session on the topics that are within the scope of these regulations, as part of public comments received on the NPRM. We respond to the comments from that session that are within the scope of these regulations under the sections of the proposed regulations to which they pertain.

Analysis of Comments and Changes: An analysis of the comments and changes in the regulations since publication of the NPRM follows.

Cross-Cutting Issues

Legal Authority

Comments: A number of commenters asserted that these regulations constitute an overreach by the Department because the regulations include requirements pertaining to topics on which the ESEA, as amended by the ESSA, delegates authority to States and LEAs. A number of commenters cited specific statutory provisions that are intended to limit the Department's authority to create new requirements or criteria for statewide accountability systems beyond those specifically enumerated in the ESEA, as amended by the ESSA. Some of these commenters contended that any regulatory requirement that is not specifically authorized by the statute and that establishes parameters for how States or LEAs implement the law exceeds the Department's authority and violates the statute.

Discussion: Section 410 of the General Education Provisions Act (GEPA), 20 U.S.C. § 1221e–3, authorizes the Secretary, ''in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, . . . to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.'' Section 414 of the Department of Education Organization Act (DEOA) similarly authorizes the Secretary to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. Section 1601(a) of the ESEA, as amended by the ESSA, bolsters this general authority through an additional grant of authority for the Secretary to issue regulations under title I of the ESEA. That provision states that the Secretary ''may issue . . . such regulations as are necessary to reasonably ensure that there is compliance with this title.'' Further, section 8302(a)(1) of the ESEA, as amended by the ESSA, authorizes the Secretary to ''establish procedures and criteria'' for the submission of consolidated State plans.

The provisions of these regulations are wholly consistent with the Department's rulemaking authority. In particular, section 1001 of the ESEA, as amended by the ESSA, establishes the purpose of title I of the statute, which is ''to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.'' In furtherance of that goal, section 1111(a) requires any State that desires to receive a grant under title I, part A to file with the Secretary a plan that meets certain specified requirements, which may be submitted as part of a consolidated plan under section 8302 of the ESEA. Section 1111(c)(1) of the ESEA requires each State plan to describe a statewide accountability system that complies with the requirements of subsections 1111(c) and 1111(d). In addition, section 1111(h)(1) of the ESEA requires a State that receives assistance under title I, part A to prepare and disseminate widely to the public an annual State report card for the State as a whole that meets the requirements of that paragraph, and section 1111(h)(2) requires an LEA that receives assistance under title I, part A to prepare and disseminate an annual LEA report card that includes certain specified information on the agency as a whole and each school served by the agency.

The Department has determined that each of these regulations is necessary to provide clarity with respect to provisions of the law that are vague or ambiguous, or to reasonably ensure that States and LEAs implement key requirements in title I of the ESEA, as amended by the ESSA—particularly the requirements regarding accountability systems, State and LEA report cards, and consolidated State plans—consistent with the statute and with the statutory purpose of the law.

In developing these regulations, we carefully considered each of the statutory restrictions on the Department's authority, including the restrictions in section 1111(e)(1)(A) of the ESEA, as amended by the ESSA, as well as the more specific restrictions on the Department's authority to regulate particular aspects of statewide accountability systems in section 1111(e)(1)(B). We were also mindful of the fact that one of the goals of the reauthorization of the ESEA through the ESSA was to provide greater discretion and flexibility to States and LEAs than had been provided to them under the ESEA, as amended by NCLB, and have taken steps to ensure that States and LEAs have significant discretion and flexibility with respect to how they implement these regulations.

However, we disagree with the contention that any regulation that is not explicitly authorized by the statute and places any limitation on a State's or LEA's discretion either violates the specific statutory restrictions or is otherwise inconsistent with the statute. A regulation would be inconsistent with the statute if it were directly contrary to the statutory requirements, or if it would be impossible for a State or LEA to comply with both the statutory and regulatory requirements. Regulatory requirements that provide greater specificity regarding how a State must implement certain requirements are not inconsistent with the statute or the Department's rulemaking authority in any way.

We similarly disagree with the contention that any of the regulations governing statewide accountability systems add new requirements that are outside the scope of title I, part A of the ESEA, as amended by the ESSA. All of the regulatory requirements governing statewide accountability systems fall squarely within the scope of title I, part A, as those requirements implement the statutory requirements in sections

1111(c) and 1111(d) of the ESEA, as amended by the ESSA, and are specifically intended to ensure compliance with those sections. The fact that these regulations impose certain requirements for statewide accountability systems that are not specifically mentioned in those sections of the statute does not mean that those requirements fall outside the scope of title I, part A. Accordingly, the final regulations also do not violate section 1111(e) of the ESEA, as amended by the ESSA, which prohibits the Secretary from promulgating any regulations that are inconsistent with or outside the scope of title I, part A.

Moreover, given that the Secretary has general rulemaking authority, it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision. Rather, the Secretary may issue any regulation governing title I that is consistent with the ESEA, as amended by the ESSA, that enables the Secretary to ''carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law,'' and, with respect to regulations under title I of the ESEA, that the Secretary deems ''necessary to reasonably ensure that there is compliance with'' that title.

In promulgating these regulations, the Secretary has exercised his authority under GEPA, the DEOA, and under sections 1601(a) and 8302(a) of the ESEA, as amended by the ESSA, to issue regulations that are necessary to reasonably ensure that States, LEAs, and schools comply with the requirements for statewide accountability systems, consolidated State plans, and State and LEA report cards, and that they do so in a manner that advances the statutory goals.

Changes: None.

Comments: One commenter suggested that any of the Department's proposed regulations that proposed adding a requirement not expressly contained in the ESEA, as amended by the ESSA, might violate the Spending Clause of the U.S. Constitution (Article I, section 8, Clause 1), by failing to provide ''clear notice'' to grantees of the requirements with which they must comply by accepting title I funds.

Discussion: Congress' authority to enact the provisions in title I of the ESEA, as amended by the ESSA, governing statewide accountability systems, report cards, and State plans flows from its authority to ''. . . provide for general Welfare of the United States.'' Article I, Section 8, Clause 1 (commonly referred to as Congress' ''spending authority''). Under that authority, Congress authorized the Secretary to implement the provisions of the ESEA, as amended by the ESSA, and specifically authorized the Secretary to issue ''such regulations as are necessary to reasonably ensure that there is compliance with'' title I. Thus, the regulations do not conflict with Congress' authority under the Spending Clause. With respect to cases such as *Arlington C. Sch. Dist. Bd. of Educ.* v. *Murphy,* States have full notice of their responsibilities under these regulations through the rulemaking process the Department has conducted under the Administrative Procedure Act and the General Education Provisions Act to develop the regulations.

Changes: None.

Data Collection

Comments: Some commenters recommended removing § 200.17, stating that the amount of data already collected has not improved academic achievement and that the Federal government should not collect data on children. These comments were also made regarding §§ 200.20–24, 200.30–31, 299.13, and 299.19 of the proposed regulations. In addition, a number of commenters recommended retaining § 200.7 of the current regulations, which sets forth the data disaggregation and privacy requirements under the NCLB, without commenting specifically on proposed § 200.17, which would establish similar requirements under the ESSA.

Discussion: The Department believes that data collected for purposes of accountability and data reported on State and LEA report cards are important for providing parents and stakeholders the information they need to understand how schools are held accountable and how students, including each subgroup of students, are performing. Further, collecting these data is necessary to comply with the requirements of section 1111 of the ESEA, as amended by the ESSA. In addition to promoting transparency, this information is essential for identifying and closing educational achievement gaps, which is one of the primary purposes of the law. We note that there are also multiple provisions in title I of the ESEA, as amended by the ESSA, including section 1111(c)(3), (g)(2)(N), and (i), that specify privacy protections for individuals related to collection or dissemination of data consistent with section 444 of the GEPA (20 U.S.C. 1232g, commonly known as the Family Educational Rights and Privacy Act of 1974). We further note, as we stated in the NPRM, that § 200.17 retains and reorganizes the relevant requirements of current § 200.7, which would be removed and reserved, so that these requirements (related to disaggregation of data primarily for accountability purposes) are incorporated into the sections of the final regulations pertaining to accountability, instead of pertaining to assessments.

Changes: None.

Section 200.12 Single Statewide Accountability System

Comments: A number of commenters asked for clarity about the timeline under which a State will be required to implement a statewide accountability system, noting the distinction between the school year in which data are collected and the school year in which schools are differentiated and identified for support and improvement.

Discussion: While we address specific comments related to the implementation timeline for the identification of schools in the statewide accountability system in § 200.19, which begins no later than the 2018–2019 school year, in order to avoid confusion between the year in which a State collects data to calculate its indicators under § 200.14 and the year in which a State first differentiates and identifies schools under §§ 200.18 and 200.19, we have removed the reference to a specific year of implementation in § 200.12.

Changes: We revised § 200.12(a)(1) to strike ''beginning no later than the 2017–2018 school year.''

Comments: One commenter suggested that the Department create, through the regulatory process, an education office of the ombudsman for each State that would be an independent organization to ensure fair, objective, and transparent investigations of complaints and that would resolve data and other disputes related to key elements of statewide accountability systems, including meaningful differentiation of all public schools and identification of schools to implement comprehensive or targeted support and improvement plans.

Discussion: While we recognize that LEAs or schools may occasionally dispute accountability determinations under the ESEA, we believe that States are best positioned to determine an appropriate and timely process for resolving such disputes, which may include establishing an ombudsman's office for this purpose without the Department requiring this. We decline to change the regulations in this area.

Changes: None.

Comments: Many commenters wrote either in support of or opposition to various aspects of the proposed regulations on statewide accountability systems, which are listed in § 200.12, including indicators under § 200.14 and

school improvement plans under §§ 200.21 and 200.22.

Discussion: We appreciate feedback in response to the high-level overview of statewide accountability systems in proposed § 200.12. However, we address comments on specific components of the accountability system in the sections of the proposed regulations that address these specific components.

Changes: None.

Single System

Comments: A number of commenters wrote generally about the framework for a single statewide accountability system; some supported and others opposed the creation of a single system. Commenters writing in opposition variously objected to the word ''single'' as not specifically authorized by the statute, described the proposed regulations as an overreach of the Department's authority, and warned that the proposal, contrary to its stated purpose, would encourage separate State and Federal accountability systems. Other commenters asserted that the requirement for a single statewide system would prevent States, LEAs, or charter schools from creating their own accountability systems, separate from the accountability system required under the ESEA, that are better tailored to local needs. Another commenter asked the Department to provide guidance on how to reconcile conflicting school improvement identifications that may result from separate State and ESEA accountability systems. Finally, one commenter recommended that the regulations permit flexibility for rural schools and districts, suggesting, for example, that rural schools be overseen in accordance with State rural school laws, similar to the provisions in the statute and § 200.12(a) for public charter schools.

Discussion: We believe that a single statewide system is necessary to meet ESEA requirements, particularly for ensuring that annual meaningful differentiation and identification of schools is fair, consistent, and transparent to the public; and to ensure that all schools are treated equitably and held to the same expectations. However, the requirement for a single statewide system in § 200.12 for Federal accountability purposes does not preclude a State, LEA, or charter school organization from establishing a separate accountability system for its own purposes, including school identification and support, should such a system be required under State or local law, or desired for other reasons.

Finally, it is not necessary for the ESEA, as amended by the ESSA, to specifically authorize the Secretary to clarify that the statewide accountability system must be a single statewide accountability system, as this regulatory requirement is being promulgated pursuant to the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and is fully consistent with section 1111(e) of the ESEA, as amended by the ESSA (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*). Without this clarification, the statutory provision on its own is ambiguous and could lead to inconsistent or unfair systems of annual meaningful differentiation and identification for schools. In addition, the requirement is necessary to reasonably ensure compliance with, and falls squarely within the scope of, the requirement in section 1111(c)(1) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: A number of commenters suggested that the Department provide flexibility for different accountability systems for certain types of schools, particularly alternative schools, to allow for the use of measures that are better suited to describe student outcomes and school performance in alternative settings. Specifically, commenters noted a need to differentiate accountability requirements associated with the four-year adjusted cohort graduation rate to allow students in non-traditional settings to achieve high school diplomas without time constraints. However, other commenters requested that the Department maintain strong and uniform accountability measures for all schools, including those that serve students with unique and specialized needs.

Discussion: We agree that certain types of schools, such as alternative high schools, schools serving students living in local institutions for neglected or delinquent children, including juvenile justice facilities, and very small schools, may have unique concerns and, in some instances, need additional flexibility that the statewide accountability system described in § 200.12 may not be able to provide in order to adequately reflect the achievement of the student population and overall success of the school. We address this concern in response to comments under the subheading *Other Requirements in Annual Meaningful Differentiation of Schools* in § 200.18, which we have revised to clarify the differentiation in accountability requirements permitted for certain categories of schools that are designed to serve special populations of students.

Changes: None.

Comments: Several commenters from tribal organizations suggested that the Department revise proposed § 200.12 to require specific provisions in a State's accountability system for students instructed primarily through Native American languages. Another commenter representing tribes expressed support for a uniform statewide accountability system in § 200.12, noting that the requirements to measure student achievement are critical for the more than 90 percent of American Indian and Alaska Native students that attend public schools supported by SEAs.

Discussion: We appreciate the comments addressing unique concerns affecting American Indian and Alaska Native students. As described in § 200.12, a State's accountability system must be based on the challenging State academic standards under section 1111(b)(1) of the ESEA and academic assessments under section 1111(b)(2). To the extent that commenters requested revisions regarding requirements for State assessments, these regulations do not address the requirements associated with the specific academic assessments that a State must administer and use in its statewide accountability system; rather, such issues will be addressed through the final regulations on assessment for title I, part A. Section 200.12 provides broad parameters for State accountability systems and does not address the language of instruction used. We agree with the commenter that a single statewide accountability system is critical to maintain uniform high expectations for all students, including American Indian and Alaska Native students, and to close achievement gaps.

Changes: None.

Comments: None.

Discussion: As a technical edit, we have replaced § 200.12(b)(3) to emphasize that the State's accountability system must include all indicators in § 200.14.

Changes: We have replaced § 200.12(b)(3) with the requirement that the State's accountability system must include all indicators in § 200.14. We have subsequently renumbered proposed paragraphs (b)(3) through (b)(5) to (b)(4) through (b)(6), respectively.

Consideration of Additional Academic Subjects

Comments: Multiple commenters expressed that State accountability systems should allow for consideration of academic subjects in addition to reading/language arts and mathematics.

However, several commenters also expressed support for the emphasis on academic achievement and high school graduation in the regulations, among the multiple measures of school performance that can be included in statewide accountability systems.

Discussion: Section 1111(c)(4)(A)–(B) of the ESEA, as amended by the ESSA, require each State to establish long-term goals and measurements of interim progress and an accountability indicator that are based on student academic achievement on the State's reading/language arts and mathematics assessments. Further, section 1111(c)(4)(C) requires that the Academic Achievement indicator be one that receives ''substantial'' weight in the system of annual meaningful differentiation of schools. However, we agree with commenters emphasizing that a well-rounded education includes subjects beyond reading/language arts and mathematics, and this is a valuable opportunity for States under the ESEA. Under the ESEA and our regulations, a State may include additional subjects in its statewide accountability system. We further address this concern in response to comments in §§ 200.13 and 200.14, which establish the requirements for the long-term goals and indicators used in the State accountability system.

Changes: None.

Goals and Measurements of Interim Progress

Comments: A few commenters requested that the Department strengthen the language in proposed § 200.12(b)(2) requiring that the State's accountability system be informed by the State's long-term goals and measurements of interim progress under § 200.13. One commenter requested that the Department clarify in the text of § 200.12 that the long-term goals and measurements of interim progress established under § 200.13 must be ambitious.

Discussion: Section 200.12 is intended to provide a high-level overview of the requirements for a single statewide accountability system; section 200.13 fully addresses the requirements for long-term goals and measurements of interim progress. In addition, we are revising § 200.14 (accountability indicators) and § 200.18 (annual meaningful differentiation of school performance) to clarify the role of goals and measurements of interim progress in the statewide accountability system. We agree with the comment that the regulations would be more precise and consistent with the requirements in § 200.13 with the addition of the word ''ambitious.''

Changes: We have revised § 200.12(b)(2) to clarify that a State's accountability system must be informed by ambitious long-term goals and measurements of interim progress.

Charter Schools

Comments: A number of commenters supported the requirement in § 200.12 that the statewide accountability system applies to all public elementary and secondary schools in the State, including public charter schools. Many commenters also supported the additional statutory requirement that charter schools be overseen in accordance with State charter school law. One commenter noted that including this language helps to clarify that, in general, charter schools are subject both to ESEA accountability requirements and any additional accountability expectations that State charter school authorizers may establish in accordance with State charter school law. For example, a charter authorizer may revoke or decline to renew a charter based on school performance measured against the requirements of the charter even if the State is not requiring action based on the ESEA accountability requirements.

Another commenter expressed concern that under the ESEA, as amended by NCLB, State charter school laws emphasized the use of high-stakes testing to assess school performance; this commenter requested that the final regulations support accountability for charter schools based on the same multi-measure systems required by the ESEA, as reauthorized by the ESSA, for traditional public schools.

A few commenters called for increased regulation and accountability for charter schools.

Discussion: We appreciate support from commenters stating that the regulations help to clarify the applicability of accountability requirements for charter schools under both the ESEA and State charter school laws, and we believe that it is helpful to further clarify how public charter schools are both accountable under the ESEA requirements, as well as the performance expectations established under State charter school law and the charter school's authorizer. For example, we agree with the commenter who noted that charter authorizers may still revoke or decline to renew a charter based on school performance using the authorizer's established charter review or revocation processes, even if the school is in compliance with the ESSA accountability requirements, and are revising the final regulations to specify that in the case of an authorizer that acts to revoke or non-renew a school's charter, such action supersedes the requirements to implement a comprehensive or targeted support and improvement plan under §§ 200.21 or 200.22, respectively, recognizing that State charter school laws may impose more rigorous interventions than those required by the ESEA, as amended by the ESSA. We also agree that public charter schools must be included and held accountable in the statewide accountability system using the same methodology (including the same indicators) that is used with traditional public schools to annually differentiate school performance and identify schools for support and improvement. While accountability for charter schools must be overseen in a way that is consistent with State charter school law, this does not exempt charter schools from the State's system of annual meaningful differentiation, identification of schools, and implementation of support and improvement plans. We have revised § 200.12(b)(5)–(6) to reiterate the inclusion of public charter schools in these components of the statewide accountability system, with a corresponding change to § 200.18(a).

Changes: We have revised § 200.12(c)(2) to clarify that if an authorized public chartering agency, consistent with State charter school law, acts to decline to renew or to revoke a charter for a particular charter school, the decision of the agency to do so supersedes any notification from the State that such a school must implement a comprehensive support and improvement or targeted support and improvement plan under §§ 200.21 or 200.22, respectively. We have also revised § 200.12(b)(5)–(6) to further specify that the requirements for annual meaningful differentiation and identification of all public schools include all public charter schools, and made a corresponding change to § 200.18(a).

Section 200.13 Long-term Goals and Measurements of Interim Progress

Academic Achievement

Comments: Several commenters expressed support for the requirement that States set long-term goals and measurements of interim progress for improved academic achievement based on grade-level proficiency as measured on annual State assessments in mathematics and reading/language arts.

Other commenters recommended that the Department give States flexibility to use different measures in setting long-term goals and measurements of interim progress for academic achievement,

including individual student growth, metrics that account for student achievement at all levels (*e.g.,* average scale scores, proficiency indices), or measures that give credit for students moving toward proficiency who have not yet attained grade-level proficiency. Some commenters also stated that the Department's proposed requirement to base academic achievement goals and measurements of interim progress on grade-level proficiency ignores section 1111(e)(1)(B)(iii)(I)(bb) of the ESEA, as amended by the ESSA, which prohibits the Department from prescribing States' numeric long-term goals and measurements of interim progress and is inconsistent with Congressional intent to give States flexibility in setting their goals.

Commenters also suggested that the grade-level proficiency requirement be retained, but revised to reflect that:

- grade-level proficiency must be aligned with minimum State requirements to enroll in college or enter a career; and
- achieving proficiency is the minimum goal for academic achievement, and so the phrase ''at a minimum'' should be added before every instance of ''grade-level proficiency.''

Discussion: We appreciate the support of commenters for requiring goals based on grade-level proficiency. We believe this requirement is both essential to maintain high expectations for all students and consistent with the statutory requirements in section 1111(c)(4) of the ESEA for the accountability system to be based on the State's challenging academic standards, which must include grade-level academic achievement standards and may include alternate academic achievement standards for students with the most significant cognitive disabilities, and in section 1111(c)(4)(A)(i)(I)(aa) which specifies that the long-term goals and measurements of interim progress must be measured by proficiency on the State's annual assessments, which are aligned to these achievement standards. We also note that the statutory requirements for challenging academic standards under section 1111(b)(1)(D) specify that a State's standards must align with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards, so we do not think it is necessary to restate that in this section. We further maintain that for educators, parents, and students, but especially, parents and students, information about whether students are performing at grade-level lets them know whether their student is meeting their State's expectations for their grade.

In response to commenters who asserted that the proposed requirement violates the provision in section 1111(e)(1)(B)(iii)(I)(bb) of the ESEA, as amended by the ESSA, we note that the requirement in § 200.13(a)(1) for States to set goals for academic achievement based on grade-level proficiency is consistent with section 1111(e)(1)(B)(iii)(I)(bb) of the ESEA, as amended by the ESSA, because it does not prescribe the numeric long-term goals that a State establishes for academic achievement, or the progress that is expected for each subgroup toward those goals. Further, the Department has determined that the requirement in § 200.13(a)(1)is necessary to clarify that the reference to academic achievement as ''measured by proficiency'' in section 1111(c)(4)(B)(i)(I) of the ESEA, as amended by the ESSA, means academic achievement as measured by the percentage of students attaining *grade-level* proficiency because, without that clarification, the statutory language is vague and ambiguous; absent clarification, States may have difficulty determining whether they are complying with the requirement. Moreover, this clarification of the statutory requirement is necessary to reasonably ensure that the measure of proficiency used in the Academic Achievement indicator is consistent with the requirement in section 1111(b)(2)(B)(ii) that a State's academic assessments provide coherent and timely information about whether a student is performing ''at the student's grade level.'' In addition, given the Department's rulemaking authority previously described in the discussion of Cross-Cutting Issues, it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

We recognize that States may find value in accounting for students who are not yet proficient or performing above grade-level or measuring how students are performing against other measures of performance, such as student growth. We note that States can set goals for measures other than grade-level proficiency for their own purposes, if they so choose, and we further discuss in response to comments in § 200.14 how progress and performance of students who are below or above the proficient level may be included in the Academic Achievement indicator or other indicators in the accountability system and how student growth is included in the Academic Progress indicator.

Changes: None.

Comments: None.

Discussion: We have determined that the regulations could provide greater clarity regarding how States are expected to set long-term goals and measurements of interim progress for academic achievement, to reflect that those goals are measured by the percentage of students attaining grade-level proficiency.

Changes: We have revised § 200.13(a)(1) to specify that the goals and measurements of interim progress are based on the percentage of students attaining grade-level proficiency on the State's annual assessments.

Comments: Some commenters requested that the Department require States to set goals for academic subjects beyond reading/language arts and mathematics, with some asserting that what they described as the overly narrow focus on reading/language arts ignores the need for a well-rounded education, including access to arts and music education. One commenter specifically recommended that States be required to establish goals for science, while another commenter wrote that proposed § 200.13 over-emphasizes student performance on standardized tests.

Discussion: The proposed regulations are consistent with section 1111(c)(4)(A)(i)(I)(aa) of the ESEA, as amended by the ESSA, which specifies that States must establish long-term goals and interim measurements of progress for, at a minimum, academic achievement on the State's reading/language arts and mathematics assessments. The statute gives States flexibility to establish goals for other subjects if they choose, and we do not wish to limit State discretion to address their own needs and priorities in this area in the final regulations.

Changes: None.

Graduation Rates

Comments: A few commenters requested that the Department clarify what is meant by ''more rigorous'' in regards to the requirement that, if a State chooses to use an extended-year adjusted cohort graduation rate as part of its Graduation Rate indicator, the State must establish long-term goals for that extended-year rate that are more rigorous than those established for the four-year adjusted cohort graduation rate. In particular, two commenters requested clarification that the term ''more rigorous'' refers to the graduation rate and not the academic requirements

for graduation (*e.g.,* standards, levels of proficiency).

Discussion: We generally intend that the ''more rigorous'' goals required for extended-year cohort graduation rates be higher than those for four-year adjusted cohort graduation rates, but we decline to require this in the final regulations in recognition that States have flexibility to determine how much higher over a State-determined period of time. We also note that, consistent with the statute, our regulations for graduation rate goals address only the rates of, and not the requirements for, high school graduation.

Changes: None.

Comments: None.

Discussion: We believe the proposed regulations could provide greater clarity on the expectation that the ''more rigorous'' requirement applies to both the long-term goals and measurements of interim progress for any extended-year rate that the State chooses to use and are revising § 200.13(b)(2)(ii) to indicate that both long-term goals and measurements of interim progress should be higher for each extended-year rate as compared to long-term goals and measurements of interim progress for the four-year rate.

Changes: We have revised § 200.13(b)(2)(ii) so that the requirement for more rigorous expectations applies to both the long-term goals and measurements of interim progress for each extended-year graduation rate.

Comments: While a few commenters indicated support for State discretion to establish long-term goals and measurements of interim progress for both four-year and extended-year graduation rates, two commenters expressed concern that the four-year rate was over-emphasized in the proposed regulations, with a potentially negative impact on schools that focus on dropout prevention.

Discussion: We agree that it is important for States to have the flexibility within their accountability systems to give credit to schools for students who graduate from high school in more than four years, and we believe that the final regulations provide such flexibility. For example, § 200.14 allows States to measure the extended-year adjusted cohort rate as part of the Graduation Rate indicator. Further, the regulations are aligned with section 1111(c)(4)(A)(i)(bb)(AA) of the ESEA, as amended by the ESSA, which requires that States establish goals for the four-year adjusted high school graduation rate.

Changes: None.

Expected Rates of Improvement

Comments: A number of commenters supported the requirement that States establish goals to require greater rates of improvement for subgroups of students that are lower-achieving and graduate high school at lower rates. Commenters indicated that this requirement is important for equity, that it is appropriate to focus on progress for the most disadvantaged student groups, that it is important to hold schools accountable for closing achievement and opportunity gaps, and that this requirement appropriately expects teachers, principals, and other school leaders to make greater progress with historically underserved students.

However, multiple other commenters opposed this requirement, variously stating that students progress at different rates; that no subgroup should be expected to progress at a greater rate than any other student subgroup; that the requirement is too prescriptive in view of Congressional intent to allow States flexibility in establishing goals; and that it ignores section 1111(e)(1)(B)(iii)(I)(bb) of the ESEA, as amended by the ESSA, which states that nothing in the ESEA, as amended by the ESSA, authorizes the Department to prescribe the progress expected from any subgroup of students in meeting long-term goals.

Discussion: We appreciate the support of commenters for the proposed regulations on setting goals that require greater improvement from lower-performing student subgroups, which we believe are essential for clarifying and reasonably ensuring compliance with the requirement in section 1111(c)(4)(A)(i)(III) of the ESEA, as amended by the ESSA, that a State's goals for subgroups of students who are behind on academic achievement and graduation rates take into account the improvement needed to make significant progress in closing gaps on those measures. We agree with commenters that students make progress at different rates, but believe that it is appropriate, with the goal of closing achievement gaps in mind, for States to set goals to make greater progress with subgroups of students who are further behind.

Given that the requirement thus falls squarely within the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA (see discussion of the Department's rulemaking authority under the heading *Cross-Cutting* Issues), it is not necessary for the statute to specifically authorize the Secretary to issue this particular regulatory requirement. Moreover, the requirement does not violate section 1111(e) of the ESEA, as amended by the ESSA, because the requirement for States to set goals that require greater rates of improvement from lower-performing subgroups is within the scope of and consistent with section 1111(c)(4)(A)(i)(III) of the ESEA, as amended by the ESSA, which requires that a State's goals for subgroups of students who are behind on academic achievement and graduation rates take into account the improvement needed to make significant progress in closing gaps on those measures. It is also consistent with section 1111(e)(1)(B)(iii)(I)(bb) of the ESEA, as amended by the ESSA, because it does not prescribe the numeric long-term goals that a State establishes for academic achievement and graduation rates or the progress that is expected for each subgroup toward those goals.

Changes: None.

Comments: A few commenters requested that the Department further clarify what is meant by requiring ''greater rates of improvement'' for subgroups of students that are lower-achieving and subgroups of students that graduate high school at lower rates. One commenter specifically recommended that the Department add language ensuring that States take into account how much improvement would be necessary for these subgroups of students to meet long-term goals and make significant progress in closing statewide proficiency gaps.

Discussion: We recognize that there are many ways in which States could choose to provide for greater rates of improvement and therefore decline to make the requested change. Rather, we intend to issue non-regulatory guidance to support States in setting meaningful long-term goals and measurements of interim progress.

Changes: None.

English Language Proficiency

Comments: A number of commenters responded to the Department's directed question asking whether, in setting ambitious long-term goals for English learners to achieve ELP, States would be better able to support English learners if the proposed regulations included a maximum State-determined timeline and, if so, what that maximum timeline should be. Many commenters appreciated the parameters established in the proposed regulations for using a uniform procedure to create long-term goals based on English learners with similar characteristics, but felt that English learners would be better served if the proposed regulations also set a maximum State-determined timeline for

English learners to achieve ELP. The majority of the commenters in favor of setting a maximum State-determined timeline supported a maximum timeline of five years for English learners to achieve ELP in order to best align with existing research. On the other hand, several commenters urged the Department not to set a limit on the maximum State-determined timeline for English learners to achieve ELP; these commenters highlighted the diversity of the English learner population as a key reason to avoid setting a uniform maximum timeline, and worried that such a timeline would create incentives for States to prematurely exit English learners from services. Some commenters further believed that limiting the maximum State-determined timeline (such as five years) would provide a disincentive for States to adopt certain types of evidence-based language instructional education programs, such as dual-language programs, in which English learners on average achieve proficiency over a longer period of time, but have been found to perform better in the academic content areas compared to English learners who participated in other types of language instructional education programs. In addition, some commenters believed that creating a limit on the maximum timeline in the regulations constitutes overreach and goes beyond any necessary requirements to comply with the statute.

Discussion: We agree with commenters who stated that the heterogeneity of the English learner population would make it difficult to set an appropriate maximum State-determined timeline that would be the same across all States for all English learners to achieve ELP. Additionally, the Department does not wish to create a disincentive for States in adopting any types of language instructional education programs that have been demonstrated to be effective through research, nor do we want to encourage States to cease providing necessary services to English learners to avoid exceeding a certain timeline.[1] Although there is a body of research on the time it takes for English learners to achieve ELP which would support a maximum State-determined timeline of five years, most research identifies a range of years over which English learners typically achieve ELP, based on a number of factors including the diverse and unique needs of the English learner population.[2] Therefore the final regulations do not establish the same maximum State-determined timeline across all States for English learners to achieve ELP, but leave that determination to States' discretion.

We believe it is appropriate for a State to retain the flexibility to adopt a uniform procedure for establishing its own maximum timeline, with applicable timelines within that maximum for each category of English learners to attain proficiency, based on selected student characteristics it chooses from the list in § 200.13(c) and research, for purposes of its long-term goals. Thus, we are revising the final regulations to require that a State set an overall maximum timeline for English learners to achieve ELP on the basis of research and describe its procedure and rationale in its State plan, in § 200.13(c)(2)–(3).

Additionally, based on the comments received in response to the directed question, we believe greater clarity is needed to explain how the State-determined maximum timeline interacts with the student-level characteristics of English learners included in § 200.13 that are used to set timelines and student-level progress targets. More specifically, the proposed regulations were not sufficiently clear that a State must create and use a consistent method for evaluating selected student-level characteristics, including the student's level of ELP at the time of a student's identification as an English learner, and, based on those characteristics, determine the appropriate timeline for the student to attain ELP within the State's overall maximum timeline. The applicable timeline for a particular category of English learners is then broken down to create targets for progress on the annual ELP assessment for that category of English learners. In this way, the State's uniform procedure is used to create student-level targets for English learners who share particular characteristics. We are revising § 200.13(c) to provide greater clarity on this process for setting timelines and student-level targets. Further, we note that both the proposed and final regulations make clear that an English learner must not be exited from English learner services or status until attaining English language proficiency, without regard to such timeline.

Further, we are revising § 200.13(c) to make a clearer distinction between the State-determined maximum timeline that informs the student-level targets (the topic on which we asked a directed question in the NPRM) and the overall timeframe for which the State establishes long-term goals. Thus, the final regulations specify that the State-level long-term goals and measurements of interim progress are based on increases in the percentage of all English learners in the State who make annual progress toward ELP (*i.e.,* meet their student-level targets, based on the uniform procedure described previously). For example, a State's goal could be that within three years, 95 percent of English learners will make sufficient progress, based on the student-level targets, on the ELP assessment to achieve ELP within the State's expected timeline; the measurements of interim progress might be 85 percent and 90 percent in years one and two respectively. That State may have timelines that expect English learners who started at lower proficiency levels to achieve proficiency within 5–7 years, and English learners who start at more advanced levels and at younger ages achieving proficiency on shorter timelines. The State will set the ELP assessment progress targets based on research and data particular to the ELP assessment used; for those English learners at the lower levels of proficiency and younger ages, a larger score change or level change may typically be expected than for those who started at higher proficiency levels and for older students. By tailoring progress targets to categories of English learners, the State can realistically expect all English learners to show progress.

Changes: We have revised § 200.13(c) to require that: (1) States identify and describe in their State plans how they establish long-term goals and measurements of interim progress for increases in the percentage of all English learners in the State making annual progress toward attaining ELP; (2) States describe in their State plans a uniform procedure, applied to all English learners in the State in a consistent manner, to establish research-

[1] For more information, including resources and links to research, on providing high-quality instruction and supports for English learners, please see the Department's non-regulatory guidance on English Learners and Title III of the ESEA, as amended by the ESSA, found here: *http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf.*

[2] See, for example, Hakuta, K., Goto Butler, Y., & Witt, D. (2000). ''How long does it take English learners to attain proficiency?'' University of California Linguistic Minority Research Institute Policy Report 2000–1; MacSwan, J., & Pray, L. (2005). ''Learning English bilingually: Age of onset of exposure and rate of acquisition among English language learners in a bilingual education program.'' Bilingual Research Journal, 29(3), 653–678; Motamedi, J.G. (2015). ''Time to reclassification: How long does it take English language learners in the Washington Road Map school districts to develop English proficiency?'' U.S. Department of Education, Institute of Education Sciences; and Slavin, R.E., Madden, N.A., Calderón, M.E., Chamberlain, A., & Hennessy, M. (2011). ''Reading and language outcomes of a five-year randomized evaluation of transitional bilingual education.'' Educational Evaluation and Policy Analysis, 33 (1), 47–58.

based student level targets on which their long-term goals and measurements of interim progress are based; and (3) the description includes a rationale for determining the overall maximum number of years for English learners to attain ELP in its uniform procedure for setting research-based, student-level targets, and the applicable timelines over which English learners sharing particular characteristics are expected to attain ELP within the State-determined maximum number of years. We have also revised 200.13(c)(2) to clarify that a State's uniform procedure includes three elements: The selected student characteristics, including the student's initial level of ELP; the applicable timelines (up to a State-determined maximum number of years) for English learners sharing particular characteristics to attain ELP after the student's identification; and the student-level targets that expect English learners to make annual progress toward attaining English language proficiency within the applicable timelines for such students.

Comments: Several commenters wrote in support of the particular student-level characteristics of English learners included in proposed § 200.13(c) that States would use to determine long-term goals and measurements of interim progress for English learners. These commenters expressed the view that the proposed regulations would provide States appropriate flexibility to establish long-term goals that were tailored to the diverse needs of the English learner population and that would support effective instruction for English learners by ensuring goals were meaningful and attainable for students and educators.

In addition, a number of commenters recommended including additional student-level characteristics, including disability status, the type of language instruction educational program an English learner receives, and other State-proposed characteristics that could have an impact on a student's progress in achieving ELP.

Discussion: We appreciate feedback from commenters on the list of student-level characteristics of English learners that may be taken into account in establishing long-term goals and measurements of interim progress for attaining ELP. While we recognize that research has shown that disability status can affect an English learner's ability to attain proficiency in English, and that there are cases (as noted in § 200.16(c)) where a student's type of disability directly prevents him or her from attaining proficiency in all four domains of ELP, we note that there are many types of disabilities that have minimal or no impact on an English learner's ability to attain ELP and such a determination would need to be made on an individualized basis. Given this complexity and the difficulty in setting rules that would apply consistently to determine when it is, and is not, appropriate to set different expectations for attaining ELP for an English learner with a disability, we believe it is best to address these issues in non-regulatory guidance.

Similarly, we appreciate that students enrolled in certain types of language instructional programs, including dual language programs, may take longer to attain ELP, and it was not our intent to discourage LEAs or schools from adopting such methods. However, we believe that the current list of characteristics in § 200.13 that may be considered already includes significant flexibility for States to design appropriate and achievable goals and measurements of interim progress for English learners. We believe that encouraging implementation of high-quality programs that support English learners toward acquisition of ELP is better addressed in non-regulatory guidance.[3]

Changes: None.

Comments: Many commenters wrote in support of the general parameters for setting long-term goals included in § 200.13(c), noting that they provided States with flexibility to set goals in ways that are both ambitious and attainable and recognize the diversity within the English learner subgroup. But a few commenters stated that the proposed regulations focused too much on attainment of, rather than progress toward, achieving English language proficiency, and would require States to establish goals for both progress and proficiency similar to Annual Measurable Achievement Objectives (AMAOs) under NCLB. One commenter recommended using the statutory language of ''making progress in achieving'' ELP, rather than ''attaining.'' Another commenter was concerned that proposed § 200.13(c) was contrary to statutory intent in this area, and objected to imposing any additional requirements on States regarding their long-term goals and measurements of interim progress for English learners, believing such decisions should be made by States.

Discussion: We appreciate commenters' support for § 200.13(c). We also recognize that the statute uses progress towards ''achieving'' rather than ''attaining'' English language proficiency, but disagree with commenters that there is a meaningful distinction between ''achieving'' and ''attaining'' ELP. We further disagree with commenters who asserted that the proposed requirements for long-term goals for English Learners making progress in achieving ELP were too prescriptive and overly focused on attainment of ELP. We continue to believe that the parameters in § 200.13(c) are essential for ensuring that States establish meaningful long-term goals and measurements of interim progress that are appropriate for the diverse range of English learners found in every State.

Moreover, we do not agree that the requirements in § 200.13(c) would require States to establish attainment goals similar to AMAO–2 under the ESEA, as amended by the NCLB. Rather, States will set goals and measurements of interim progress based on the percentage of students attaining their student-level progress targets each year, as clarified in revised § 200.13(c)(1)–(2). There is no requirement for States to set a goal regarding the number or percentage of English learners achieving English language proficiency.

With respect to the comment that proposed § 200.13(c) was contrary to statutory intent in this area, and that any additional requirements regarding long-term goals and measurements of interim progress for English learners should be left to State discretion, as previously described in the discussion of *Cross-Cutting Issues,* we disagree with the argument that a regulation that sets parameters on the way a State implements its discretion under the statute is inherently inconsistent with the statute. Further, we believe the parameters established by § 200.13(c) are necessary to ensure that the goals set by States, and timelines underlying those goals, are reasonable and will help to ensure compliance with the requirement in section 1111(c)(4) that a statewide accountability system be designed to improve student academic achievement. The regulations do not dictate a specific maximum number of years for any English learner to attain proficiency, and do not dictate that a State choose particular student characteristics in setting its progress

[3] See, for example, the Department's non-regulatory guidance on English Learners and Title III of the ESEA, as amended by the ESSA, found here: *http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners92016.pdf.* Please also see the 2016 policy issued by the U.S. Department of Health and Human Services and U.S. Department of Education Policy Statement on Supporting the Development of Children who are Dual Language Learners in Early Childhood Programs which addresses bilingualism and nurturing the native and home languages of our youngest learners. The statement and its recommendations can be found here: *https://www.acf.hhs.gov/sites/default/files/ecd/dll_policy_statement_final.pdf.*

timelines, other than initial ELP level. As explained in the NPRM,[4] initial ELP level as a factor in time-to-proficiency is supported by substantial amounts of research and should help ensure fair treatment of schools with high numbers of English learners in the State accountability system.

Changes: None.

Other Topics

Comments: The Department received a variety of supportive comments on proposed § 200.13. Several commenters stated that the proposed regulations, in general, give States the authority and discretion to establish long-term goals and appreciated the flexibility afforded to States in this matter. A few commenters indicated that they appreciated that the Department emphasized holding all students to the same high standards of academic achievement. Commenters also expressed support for requiring States to:

- Set academic achievement goals for reading/language arts and mathematics separately;
- establish goals for student subgroups as well as for all students; and
- use the same multi-year timeline to set long-term goals for all student subgroups.

Discussion: We appreciate the support from commenters for these regulations. We agree that it is important for States to have flexibility to establish long-term goals and measurements of interim progress that are appropriate for their unique contexts. Further, to provide additional clarity on these requirements, we are revising § 200.13 to emphasize the required use of the same multi-year timeline to set long-term goals for all students and for each subgroup of students, except that the requirement for disaggregation of long-term goals and measurements of interim progress does not apply to goals related to ELP.

Changes: We have revised § 200.13 so that the requirement for a State to use the same multi-year timeline to achieve its long-term goals for all students and for each subgroup of students applies across all three areas in which a State must set long-term goals—achievement, graduation rates, and ELP—except that the requirement for disaggregation of long-term goals and measurements of interim progress does not apply to goals related to ELP.

Comments: A few commenters recommended that the Department adjust the language in § 200.13(a)(2)(i) to clarify what it means to apply the same standards of academic achievement to all public schools in the State, except as provided for students with the most significant cognitive disabilities. Several commenters recommended that the Department make clear that alternate academic achievement standards for students with the most significant cognitive disabilities who take an alternate assessment must be based on the same grade-level academic content standards as for all other students. One commenter suggested that the Department use the phrase ''academic achievement standards'' instead of ''standards of academic achievement'' to be more precise in meaning and consistent with the statute.

Discussion: The Department agrees that it is important for the language of the regulations to be clear regarding expectations for students with the most significant cognitive disabilities, to whom the same grade-level academic content standards apply, even though their progress may be assessed using an alternate assessment aligned with alternate academic achievement standards. However, because the statute and applicable regulations on standards and assessments address these concerns and because this provision is specifically focused on the academic achievement standards, we decline to add language regarding grade-level academic content standards in § 200.13. We agree that referencing alternate academic achievement standards, as described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA, and changing the phrase ''standards of academic achievement'' to ''academic achievement standards'' is appropriate and helpful to clarify requirements for long-term goals and measurements of interim progress as they pertain to students with the most significant cognitive disabilities.

Changes: We have revised the language in § 200.13(a)(2)(i) to be clear that the requirements for long-term goals and measurements of interim progress for academic achievement against grade-level proficiency refer to the State's academic achievement standards, as described in section 1111(b)(1) of the Act, and to make clear that the performance of students with the most significant cognitive disabilities may be assessed against alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the ESEA, as amended by the ESSA.

Comments: One commenter recommended that the Department establish a minimum annual percentage increase in proficiency rates necessary to meet the requirement that long-term goals and measurements of interim progress be ''ambitious.'' Another commenter requested that the Department establish parameters for what is meant by an interim measurement of progress, without specific suggestions for what the parameters should be.

Discussion: We agree that it will be important for States to establish meaningful and ambitious long-term goals and measurements of interim progress ambitious, but we believe the final regulations provide States with the appropriate level of discretion in this area, consistent with the statute. In addition, we intend to issue non-regulatory guidance on this topic to support States in setting meaningful long-term goals and measurements of interim progress.

Changes: None.

Comments: A few commenters requested that the Department add clarifying language to communicate that scores from assessments given in students' native languages should be included in the accountability system and publicly reported. Additional commenters suggested that the Department clarify that a State's long-term goals and measurements of interim progress should pertain, where applicable, to a Native American language of instruction for students instructed primarily through Native American languages.

Discussion: We are regulating separately on assessment requirements, but we note that the statute provides in section 1111(b)(2)(F) that States make every effort to develop student academic assessments in languages that are present to a significant extent in the student population. For assessments that are part of a State's assessment system and that are given to English learners in the student's native language for reading/language arts, mathematics, and science, the results would be included in the State's accountability system. Because this is clear under the statute, we do not believe it is necessary to add this to the regulations.

With regard to the comment about instruction through a Native American language, nothing in § 200.13 addresses the language of instruction, and thus no change is needed.

Changes: None.

Comments: One commenter requested that States be required to establish a uniform procedure for setting long-term goals and measurements of interim progress for students with disabilities, taking into account student characteristics and available research, similar to what is required of States in

[4] See: 81 FR 34540, 34544 notes 1 and 2 (May 31, 2016).

establishing goals for English learners toward achieving ELP under § 200.13(c). This commenter suggested that such a process would be beneficial to students with disabilities and help ensure that goals for students with disabilities are set in alignment with accountability requirements as well as a student's individualized education program (IEP).

Discussion: The Department included the requirement that States establish uniform procedures with regards to setting goals for English learners toward achieving language proficiency in order to allow differentiation of goals for categories of English learners that share similar characteristics, including initial level of ELP. We believe this is appropriate for English learners, given the varied needs and shifting composition of the particular students included in the English learner population and for whom the goal is to attain English proficiency and exit the program, but do not think it is applicable or appropriate to require States to develop such procedures for setting goals for children with disabilities who, while their educational needs also vary, are entitled to receive special education and related services for as long as determined necessary by their IEP teams in order to receive a free appropriate public education, and who therefore are not routinely exiting the subgroup. Rather than a differentiated process based on particular student characteristics, we encourage States to consider how they may set long-term goals and measurements of interim progress in ways that expect greater rates of progress, and result in closing educational achievement gaps, for low-performing subgroups, including—if applicable—children with disabilities. We intend to issue non-regulatory guidance to assist States in these efforts.

Changes: None.

Comments: One commenter recommended that the Department make clear that failing to meet a State's established measurements of interim progress and long-term goals is not a violation of the law.

Discussion: We do not believe this clarification is necessary, as neither the statute nor the final regulations suggest or imply that a failure to meet State-determined goals or measurements of interim progress would be considered a violation of the law.

Changes: None.

Comments: One commenter indicated that the emphasis on on-time graduation and grade-level proficiency is contrary to child development because some students require more time and support than others to achieve the same goal.

Discussion: We agree with the commenter that students have unique needs and require different types and levels of support and amounts of time to reach certain goals. However, we disagree that establishing goals for grade-level proficiency and high school graduation is developmentally inappropriate; such goals set high expectations for students and provide valuable information about whether students are performing on grade-level and are prepared to graduate from high school. Additionally, the regulations align to the requirements in section 1111(c)(4)(A) of the ESEA, as amended by the ESSA, that States set long-term goals and measurements of interim progress for academic achievement based on proficiency on annual assessments and for high school graduation rates.

Changes: None.

Comments: None.

Discussion: We have determined that § 200.13(a)(1) and § 200.13(b)(1) could provide greater clarity on what information States have to include in their State plans regarding their long-term goals and measurements of interim progress and have revised the regulations to make clear that States must identify *and* describe how they established their long-term goals and measurements of interim progress. We believe the language in the proposed regulations was vague and that without this clarification States may have difficulty determining whether they are complying with the requirement.

Changes: We have revised the language in § 200.13(a)(1) and § 200.13(b)(1) to clarify what information regarding long-term goals and measurements of interim progress a State must include in its consolidated State plan.

Section 200.14 Accountability Indicators

Comments: One commenter opposed the requirement in proposed § 200.14(a) that the same measures be used within each indicator for all schools, asserting that this requirement would unfairly penalize students in alternative schools.

Discussion: In general, we believe that statewide accountability systems must include the same measures within each indicator in order to provide fair, consistent, and transparent accountability determinations. However, as we discuss later in these final regulations, we have revised § 200.18(d)(1)(iii) to incorporate the flexibility included in proposed § 299.17 that allows States to use a different methodology for identifying for comprehensive support and improvement and targeted support and improvement schools that are designed to serve unique student populations, including alternative schools. Given that flexibility, we decline to make any changes to this requirement.

Changes: None.

Comments: Several commenters expressed appreciation for the Department's clarification in the preamble of the NRPM that States can update and modify indicators and measures over time. In particular, these commenters noted that such flexibility would allow States to include additional indicators as the research basis for such indicators matures, consistent with the proposed requirements in section 200.14(d). One commenter suggested we clarify that States may include indicators they plan to use in the future, when data is available, within their State plans so that their intentions are transparent.

Discussion: We appreciate the support we received from commenters regarding the flexibility for States to change or add measures to their accountability systems over time. As we discussed in the NPRM, we recognize that States may want to update their accountability systems after receiving additional input or as new data become available. However, because States may not yet know which measures they would change or add to their accountability system at a later date, we do not believe it would be appropriate to require States to include a discussion of that topic in their State plans. Therefore, we decline to add such a requirement to the final regulations.

Changes: None.

Comments: A number of commenters broadly opposed the requirements in proposed § 200.14 and recommended the Department give States as much flexibility as possible in developing and implementing indicators and measures within their statewide accountability systems. Some of these commenters believe the proposed requirements reduce flexibility for States and LEAs, inconsistent with the ESEA. Other commenters asserted that the proposed requirements would limit States to a specific number of indicators, contrary to the statutory requirements.

Discussion: We agree with the commenters that States have flexibility in defining the indicators that are most appropriate for their context. However, the ESEA, as amended by the ESSA, includes specific requirements for each indicator and clearly identifies which indicators must be included in the accountability system, and these statutory requirements are reflected in the final regulations. We also note that

under the statute, while States may only have a single indicator of Academic Achievement, Academic Progress, Progress in Achieving English Language Proficiency, and Graduation Rate, they may have more than one indicator of School Quality or Student Success, and neither the statute nor the proposed regulations limit the number of indicators of School Quality or Student Success States may include.

Changes: None.

Comments: Some commenters encouraged the Department to require that States report disaggregated data on the homeless student subgroup, foster student subgroup, or both, on each accountability indicator given the unique needs of students in each of those groups.

Discussion: We agree with the commenters that foster and homeless students have unique educational needs and that it may be helpful for stakeholders to have data on each group's performance on the accountability indicators. To that end, sections 1111(h)(1)(C)(ii) and 1111(h)(1)(C)(iii)(II) of the ESEA, as amended by the ESSA, require that each State report on disaggregated academic achievement and graduation rates for students identified as homeless or as a child in foster care. However, section 1111(c)(2), which identifies subgroups for the purposes of accountability, does not include such students and, thus, reporting on those subgroups is not required for the other accountability indicators. While States are certainly welcome, and even encouraged, to report separately on the performance of homeless and foster students on all of the accountability indicators, the Department declines to add such a reporting requirement.

Changes: None.

Comments: In discussing the requirement for a single summative rating in proposed § 200.18, one commenter recommended specifying that the rating be based on all accountability indicators, including the performance of all students and each subgroup of students on the State's long-term goals and measurements of interim progress.

Discussion: We agree with the commenter that it is critical for the annual meaningful differentiation of schools, as described in § 200.18, to be based on all indicators. Further, we appreciate that this suggestion highlighted a statutory requirement that was not sufficiently recognized in the proposed regulations. Under section 1111(c)(4)(B)(i) and (iii) of the ESEA, as amended by the ESSA, indicators of Academic Achievement and Graduation Rates must be based on a State's long-term goals and measurements of interim progress. Accordingly, we believe it is best to address this comment in § 200.14, rather than in § 200.18, so that we may emphasize this relationship in the requirements related to indicators, rather than the overall system of annual meaningful differentiation.

Changes: We have revised § 200.14(b)(1) and (3) to specify that the Academic Achievement and Graduation Rate indicators must be based on the long-term goals established under § 200.13.

Comments: A few commenters requested that the accountability indicators include specific provisions for students instructed primarily through Native American languages, including a disaggregated subgroup for such students, and provisions relating to inclusion of assessment scores of such students.

Discussion: We decline to add specific provisions for students instructed through a specific language medium or through a particular instructional approach. In addition, the student subgroups for the indicators are specifically required by the statute (section 1111(c)(2) of the ESEA, as amended by the ESSA), and we decline to expand those subgroups.

Changes: None.

Academic Achievement Indicator

Comments: Numerous commenters recommended clarifying the requirement in proposed § 200.14(b)(1)(i) so that it allows for a greater range of approaches in how States measure grade-level proficiency in the Academic Achievement indicator. Some commenters were concerned that the Department's interpretation of ''grade-level proficiency'' would mean only the percentage of students that attain a proficient score on State assessments would be recognized in the indicator, which they feel narrowly focuses States and schools on students just below or just above the State's achievement standards for proficiency. A few commenters instead recommended modifying the final regulation to affirmatively permit States to use a measure of achievement that considers student performance at multiple levels of achievement in order to measure grade-level proficiency. Some of these commenters requested flexibility for States to examine student performance at each level of achievement on the State's academic achievement standards and create an index that awards partial credit to a student who is not yet proficient and additional credit to a student who is at an advanced level. Similarly, other commenters suggested permitting States to consider a school's average scale score, rather than proficiency rates, as the measure of grade-level proficiency in the Academic Achievement indicator.

Discussion: Section 1111(c)(4)(B)(i)(I) of the ESEA, as amended by the ESSA, states that the Academic Achievement indicator must be ''measured by proficiency on the annual assessments required under subsection (b)(2)(B)(v)(I),'' and we agree with commenters that further clarity on this language is needed. Because proficiency must be measured by the State's annual assessments, we believe it is helpful to clarify that grade-level proficiency in § 200.14 means, at a minimum, a measure of student performance at the proficient level on the State's academic achievement standards.

We share the commenters' concerns that a focus exclusively on percent proficient could create an incentive for schools to focus too narrowly on students who are just above, or just below, the threshold for attaining proficiency and that additional ways of measuring proficiency could improve the statistical validity and reliability of a State's accountability system. For these reasons, we are revising § 200.14(b)(1)(ii) to clarify that the scores of students at other levels of achievement may be incorporated into the Academic Achievement indicator. Under the revisions to § 200.14(b)(1)(ii), a State that chooses to recognize schools for the performance of students that are below the proficient level and, at its discretion, for the performance of students that are above the proficient level within the Academic Achievement indicator must do so in a way such that (1) a school receives less credit for the score of a student that is not yet proficient than for the score of a student that has reached or exceeded proficiency, and (2) the credit a school receives for the score of an advanced student does not fully mask or compensate for the performance of a student who is not yet proficient. For example, a State may award each school 0.5 points in the achievement index for every student that scores at a level below the proficient level on the State's assessment, 1.0 points for every student that achieves a score at the proficient level, and 1.25 points for every student that scores at levels above the proficient level, but may not award 1.5 points for each of these more advanced students (as such an approach would fully compensate for the performance of a student who is not yet proficient). These safeguards allow for the scores of students at other levels of achievement

to contribute toward a school's overall determination, consistent with many commenters' concerns, while minimizing the extent to which the inclusion of measures of student performance at other levels may detract from the required information in the indicator: Proficiency on the State assessments. In addition, we note that all States, including those that choose to adopt an achievement index, must report information on its State and LEA report cards under section 1111(h) of the ESEA, as amended by the ESSA, and § 200.32, disaggregated by each subgroup of students, on the number and percentage of students performing at each level of achievement; this provides another safeguard to ensure that information on proficiency on the State assessments is clear and transparent.

Because the calculation of an average scale score treats scores above the proficient level the same as scores below the proficient level, however, the use of such scores in the Academic Achievement indicator could result in an average scale score for the school above the proficient level even if a majority of the students in the school are not yet proficient. Such an outcome on the Academic Achievement indicator would not be consistent with the statutory requirement to measure students' proficiency on the State assessments, and is thus excluded from the list of additional measures that a State may incorporate in its Academic Achievement indicator under new § 200.14(b)(1)(ii).

We also note that the ESEA, as amended by the ESSA, offers ample flexibility for States to account for student progress and achievement at all levels in their statewide accountability systems, particularly by using measures of student growth in the Academic Progress indicator (for elementary and middle schools) or Academic Achievement indicator (for high schools), or in, for example, measures related to students taking and succeeding in accelerated coursework or the percentage of students scoring at advanced levels on statewide assessments as a School Quality or Student Success indicator. We strongly encourage States to consider these other ways to help recognize the work schools are doing to help low-performing students reach grade-level standards and high-performing students in maintaining excellence and support schools in increasing access to advanced pathways for all students, while maintaining the focus of the Academic Achievement indicator on grade-level proficiency based on the State assessments.

Changes: We have revised and reorganized § 200.14(b)(1)(i)–(ii) to clarify that the Academic Achievement indicator must include a measure of student performance at the proficient level against a State's academic achievement standards, and may also include measures of student performance below or above the proficient level, so long as (1) a school receives less credit for the performance of a student that is not yet proficient than for the performance of a student at or above the proficient level; and (2) the credit a school receives for the performance of a more advanced student does not fully compensate for the performance of a student who is not yet proficient.

Comments: A number of commenters supported the requirements in §§ 200.13 and 200.14 that require academic achievement to be measured based on grade-level proficiency, as an important check to align school accountability requirements with challenging State academic standards and to ensure all students and subgroups of students are supported in meeting rigorous academic expectations. However, several commenters generally opposed the use of student test scores in the Academic Achievement indicator, or asserted that the proposed requirements would continue an overemphasis on test-based accountability systems.

Discussion: We agree with commenters that it is important for the Academic Achievement indicator to include a measure of students' grade-level proficiency, aligned with the State's challenging academic standards, as a way to promote excellence for all students. We also believe this provision is critical to fulfill the statutory purpose of title I to close educational achievement gaps, and are revising the final regulations to make the alignment of grade-level proficiency with the State's challenging academic standards clearer.

While we recognize other commenters' concerns regarding a focus on grade-level proficiency on State assessments in the Academic Achievement indicator, we disagree that its inclusion is unwarranted. First, section 1111(c)(4) of the ESEA requires the accountability system to be based on the State's challenging academic standards, which includes challenging academic achievement standards for each grade level and subject that must be assessed and included in the accountability system. Second, section 1111(c)(4)(B)(i) specifies that the Academic Achievement indicator must be measured by proficiency on the annual assessments required by section 1111(b)(2)(B)(v)(I), which must assess student performance against the challenging academic achievement standards for the grade in which a student is enrolled, and in the case of students with the most significant cognitive disabilities, may assess performance against alternate academic achievement standards that are aligned with the State's academic content standards for the grade in which a student is enrolled. In addition, section 1111(c)(4)(C) of the ESEA requires that the Academic Achievement indicator receive ''substantial'' weight in the accountability system, a distinction not afforded to the indicators of School Quality or Student Success, thus demonstrating intent that the Academic Achievement indicator based on State assessments receive greater emphasis in statewide accountability systems.

Finally, there are significant opportunities for States to design multi-measure accountability systems under the law and the final regulations that emphasize student performance and growth at all levels, not just proficient and above, as well as non-test-based measures that examine whether the school is providing a high-quality and well-rounded education. For example, we encourage States to consider using measures of student growth on their annual assessments, as these measures can identify schools where students that are not yet proficient but are making significant gains over time and closing achievement gaps. States may also consider adding measures related to students taking and succeeding in accelerated coursework as a School Quality or Student Success indicator to recognize the work schools are doing with high-performing students and encourage schools to increase access to and participation in advanced pathways for all students.

Changes: We have revised and reorganized § 200.14(b)(1)(i) to clarify that a grade-level proficiency measure is based on the State's academic achievement standards under section 1111(b)(1) of the Act, including alternate academic achievement standards for students with the most significant cognitive disabilities defined by the State consistent with section 1111(b)(1)(E) of the Act.

Comments: A few commenters supported the requirement in proposed § 200.14(b)(1)(i) that a State's Academic Achievement indicator equally measure grade-level proficiency on the statewide reading/language arts and mathematics assessments required under title I of the ESEA. Other commenters opposed this

requirement, with some misunderstanding it as a requirement for equivalent assessments in both subjects (despite being based on different academic standards) and others asserting that it is inconsistent with the statute, including section 1111(e)(1)(B)(iii)(IV)–(V) of the ESEA regarding the Secretary's authority to regulate on the weight of any measure or indicator or the specific methodology that States use to meaningfully differentiate and identify schools.

Discussion: We disagree with commenters that the Department lacks authority to regulate in this area, given the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and that these regulations fall squarely within the scope of section 1111(c)(4), consistent with section 1111(e) of the ESEA, as amended by the ESSA (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*). Moreover, these regulations are consistent with our rulemaking authority given that section 1111(c)(4) requires the statewide accountability system to be based on the challenging State academic standards for both reading/language arts and mathematics and section 1111(c)(4)(B)(i)(I) requires the indicator to measure proficiency in both subjects. However, we agree with other commenters that the proposed requirement to equally measure grade-level proficiency on State assessments in reading/language arts and mathematics was ambiguous, and that it could be misinterpreted to require these assessments to be able to be equated (*e.g.,* by using the same scale), even though they must be based on separate academic content and achievement standards. In response, we are removing the requirement, and believe it is more appropriate to address how reading/language arts and mathematics, as measured by the State assessments, may be meaningfully considered within the Academic Achievement indicator in non-regulatory guidance.

Changes: We have revised § 200.14(b)(1) to remove the requirement for States to ''equally measure'' proficiency in reading/language arts and mathematics.

Comments: One commenter suggested the Department replace the slash (/) in ''reading/language arts'' with ''or'' to make the language consistent with the statutory requirements to assess students in reading or language arts.

Discussion: We appreciate the commenter's point that the ESEA, as amended by the ESSA, uses ''reading or language arts'' to describe the academic content standards in these subjects. We note that the prior authorizations of the ESEA, the NCLB and the Improving America's Schools Act of 1994, also used the term ''reading or language arts'' to describe standards in these subjects, while the corresponding regulations on such acts used the term ''reading/language arts.'' As this is consistent with policy and practice for over two decades as a way to describe the body of content knowledge in this subject area—and we are unaware of significant confusion on this matter—we believe it is unnecessary to change ''reading/language arts'' in § 200.14 and other sections in the final regulations.

Changes: None.

Comments: A couple of commenters supported the requirement to calculate the Academic Achievement indicator, based on student participation in the State's annual assessments, by using the greater of 95 percent of all enrolled students or the number of students that participated in such assessments.

Discussion: We appreciate the commenters' support for the clarification in proposed § 200.14(b)(1) of the requirements for calculating the Academic Achievement indicator.

Changes: None.

Comments: In order to allow States to incorporate measures of student growth into their accountability systems, one commenter asked the Department to clarify that, consistent with the proposed requirements for high schools, an elementary or middle school could also include growth on the statewide assessments in its Academic Achievement indicator as part of a composite index and to include parameters to ensure these growth measures are meaningful and reflect student learning.

Discussion: We agree with the commenter that States should have the ability to incorporate student growth into their accountability systems, but disagree that growth measures are permissible in the Academic Achievement indicator for non-high schools. Section 1111(c)(4)(B)(i)(II) of the ESEA specifies that, for high schools, States may include a measure of student growth on State assessments as part of the Academic Achievement indicator. However, the statute specifies that for elementary and middle schools, student growth may be included in the Academic Progress indicator described in section 1111(c)(4)(B)(ii) rather than the Academic Achievement indicator. We also note that States may include a measure of student growth as part of a School Quality or Student Success indicator, consistent with the requirements in § 200.14, providing ample opportunity for States to include measures of growth in their indicators. Finally, because the use of student growth measures is optional and because section 1111(e)(1)(B)(iii)(III) limits the Department from prescribing specific metrics used to measure growth, we believe additional considerations for States in measuring student growth are best addressed in non-regulatory guidance.

Changes: None.

Academic Progress Indicator

Comments: Several commenters supported the use of growth in a State's accountability system and the flexibility provided around growth. One commenter asserted that a State should not be allowed to include growth on statewide assessments in its State's system unless or until adjustments can be made to account for factors beyond a school or teacher's control, including homelessness and poverty.

Discussion: We appreciate the commenters' support for the inclusion for growth in statewide accountability systems, but believe that States should have discretion, consistent with the statute, to develop and implement their own measures of student growth so long as those measures meet the other requirements of § 200.14, including validity, reliability, and comparability. The Department declines to restrict the growth models that States may use in order to provide States flexibility to develop a model appropriate for their State context, so long as it is consistent with the other requirements.

Changes: None.

Comments: A few commenters opposed what they described as the proposed requirement that a State's Academic Progress indicator be based on a measure of growth on the statewide assessments in reading/language arts or mathematics. These commenters noted that the statutory language does not require a growth score based on statewide assessments for the purposes of calculating the Academic Progress indicator and that the Department should not limit States to using growth based solely on test scores.

Discussion: While we appreciate the commenters' concern, the requirements do not limit States to using growth based solely on statewide assessment results. Under § 200.14(b)(2), a State may include either a measure of student growth based on annual reading/language arts and mathematics assessments or another academic measure that meets the requirements of § 200.14(c). For example, a State could measure achievement on reading/

language arts or mathematics on a different assessment or could measure achievement in science on the statewide science assessment within the Academic Progress indicator. Given this existing flexibility, the Department declines to make any additional changes.

In addition, as noted earlier in these regulations, it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision, given the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and that these regulations fall squarely within the scope of section 1111(c) of the ESEA, as amended by the ESSA, consistent with section 1111(e) (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*).

Changes: None.

Comments: One commenter encouraged the Department to require a State electing to include student growth in its Academic Progress indicator to use a valid and reliable growth model that adequately measures student growth for students with the most significant cognitive disabilities taking the alternate assessment. The commenter also asked the Department to clarify that States may not use an alternative growth measure, such as growth based on meeting IEP goals, for such students. Another commenter noted more generally that we should recognize individual growth for students with disabilities.

Discussion: We appreciate the commenters' interest in ensuring that students with the most significant cognitive disabilities taking an alternate assessment aligned with alternate academic achievement standards are appropriately included in any measure within the Academic Progress indicator. Section 200.14(a) requires that all indicators measure performance for all students and subgroups, including students with disabilities, and § 200.14(c) requires that any measure used by a State within the Academic Progress indicator be valid, reliable, and comparable, and calculated in the same way for all schools across the State. Together, these provisions require that States choose a measure that includes all students, including those who take an alternate assessment based on alternate academic achievement standards. Therefore, a State could not use statewide assessment results for some students and growth based on meeting IEP goals for other students. Given these existing parameters, we decline to add additional requirements.

Changes: None.

Comments: One commenter recommended that the Department use more general language when discussing the proposed Academic Progress indicator. The commenter suggested referring to this indicator as ''Another Indicator'' or ''Growth or Other Academic Indicator,'' which the commenter believed aligned more closely with the statutory description of this indicator.

Discussion: The Department believes the term ''Academic Progress'' is aligned with the description of the indicator under section 1111(c)(4)(B)(ii), which requires that such an indicator measure academic performance of students in elementary and middle schools and allow for meaningful differentiation. Use of the term ''Academic Progress'' is also necessary to reasonably ensure a clear distinction between the Academic Achievement indicator required by section 1111(c)(4)(B)(i) and the indicator required by section 1111(c)(4)(B)(ii). It thus falls squarely within the scope of title I, part A of the ESEA, as amended by the ESSA, consistent with section 1111(e), and the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA (see discussion under the heading *Cross-Cutting Issues*).

Changes: None.

Graduation Rate Indicator

Comments: One commenter requested the Department clarify that the Graduation Rate indicator may include only four-year and extended-year adjusted cohort graduation rates and not other measures related to graduation, including dropout rates or completer rates. Another commenter recommended allowing alternative measures or indicators, such as a high school completion indicator, in order to recognize schools that help students complete alternate pathways in more than four years.

Discussion: Consistent with section 1111(c)(4)(B)(iii) of the ESEA, as amended by the ESSA, the Graduation Rate indicator may only include the four-year adjusted cohort graduation rate, and, at the State's discretion, any extended year adjusted cohort graduation rates the State uses, consistent with the requirements in § 200.34. Consequently, the regulations do not permit a State to include other measures related to high school completion, including dropout or completer rates or alternate diplomas based on high school equivalency, in this indicator, and we believe this is accurately reflected in § 200.14(c)(3). We note that States would have discretion to include other measures of high school completion in a School Quality or Student Success indicator, if such measures met all applicable requirements in § 200.14.

Changes: None.

Progress in Achieving English Language Proficiency Indicator

Comments: A few commenters expressed support for the provisions pertaining to the Progress in Achieving English Language Proficiency indicator in proposed § 200.14(b)(4), including the requirement that the indicator take into account a student's initial ELP level and, at a State's discretion, the allowable student-level characteristics described in § 200.13(c), consistent with the State's uniform procedure for establishing long-term goals and measurements of interim progress for ELP.

Discussion: We appreciate the commenters' support and are renumbering and revising § 200.14(b)(4)(ii) to better align with the final requirements in § 200.13 related to the State-determined timelines, including the State-determined maximum number of years, for each English learner to attain ELP after their initial identification as an English learner, which includes consideration of a student's initial level of ELP and may include additional student-level factors as described in § 200.13.

Changes: We have revised § 200.14(b)(4) to better align with the final requirements in § 200.13(c) for considering student—level characteristics of English learners and determining applicable timelines, within a State-determined maximum number of years, for each English learner to attain ELP as the basis for setting long-term goals and measurements of interim progress in setting.

Comments: Several commenters suggested that multiple measures, specifically those not based on performance on the State's annual ELP assessment, be used to calculate the Progress in Achieving English Language Proficiency indicator in order to better align with the criteria that many States use to exit students from English learner status.

Discussion: The ESEA, as amended by the ESSA, states that the Progress in Achieving English Language Proficiency indicator must be measured by the assessments described in section 1111(b)(2)(G) (the annual ELP assessment) for all English learners in grades 3–8 and once in high school, with progress measured against the ELP assessment results from the previous

grade. The Department does not have discretion to permit additional measures beyond the State's ELP assessment to be used to calculate this indicator. However, we are clarifying the final regulations to specify that a State may, at its discretion, measure the progress of English learners in additional grades toward achieving English language proficiency on the State's ELP assessment in the indicator, particularly given the large and growing number of English Learners enrolled in the early grades.

Changes: We have revised § 200.14(b)(4) to clarify that the Progress in Achieving English Language Proficiency indicator must measure English learner performance on the State's annual ELP assessment required in ''at least'' each of grades 3 through 8 and in grades for which English learners are assessed under section 1111(b)(2)(B)(v)(I)(bb) of the ESEA, as amended by the ESSA.

Comments: Several commenters supported the requirement that, for calculating the Progress in Achieving English Language Proficiency indicator, a State must use an objective and valid measure of progress on the State's ELP assessment. However, other commenters opposed this requirement, arguing that States should have greater flexibility when determining the best measure to determine an English learner's progress.

Discussion: The Department agrees that States should have flexibility to determine which measure of progress on the ELP assessment to use for calculating performance on the Progress in Achieving English Language Proficiency indicator. However, we believe that the requirement that any measure a State selects be objective and valid is critical to ensuring that a State's accountability system fairly and meaningfully includes the progress of English learners. We maintain that the final regulations provide sufficient flexibility to States in developing this indicator, while upholding critical parameters that will help States effectively support English learners. We therefore agree with commenters that valid and objective measures must be used in the Progress in Achieving English Language Proficiency indicator and decline to make changes.

Changes: None.

Comments: One commenter attested that proposed § 200.14(b)(4) conflicts with proposed § 200.13(c), because the former allows a State to include attainment of proficiency within the Progress in Achieving English Language Proficiency indicator, while the latter requires that a State's long-term goals and measurements of interim progress expect that all English learners attain proficiency within a State-determined period of time. Another commenter recommended that all references to attainment of ELP be struck in the final regulations.

Discussion: The Department is revising § 200.13(c) to clarify how the attainment of English language proficiency factors into a State's long-term goals and measurements of interim progress, as described in response to comments on § 200.13(c). Accordingly, we are revising § 200.14(b)(4) to better align with those requirements, such as by clarifying in § 200.14(b)(4)(ii) that the measures in this indicator must be aligned to the applicable timelines for each English learner to attain proficiency after their initial identification as an English learner, within a State-determined maximum number of years. Further, we note that the provision in § 200.14(b)(4)(iii) is permissive in that States may, but are not required to, include a measure of proficiency in setting the indicator. We also disagree that the proposed requirements inappropriately provide discretion for States to measure attainment of ELP and believe that a measure of attaining ELP, if a State chooses to include one, can be complementary to the information on progress that is required in the indicator, providing schools additional information about how they are supporting the diverse range of English learners found in their communities. Therefore we are maintaining this discretion for States in § 200.14(b)(4)(iii).

Changes: We have revised § 200.14(b)(4)(ii) to better align with § 200.13 and clarify that the measures in this indicator must be consistent with the applicable timelines for each English learner to attain proficiency after the student's initial identification as an English learner, within the State-determined maximum number of years.

Comments: A few commenters suggested that the Department require that States aggregate the results of English learners on the ELP assessment at the school level (*i.e.,* not at each grade level) for the purposes of meeting the State's minimum n-size and calculating performance on the Progress in Achieving English Language Proficiency indicator.

Discussion: The Department agrees with the commenters' goal to ensure that the assessment results of as many English learners as possible are included when calculating performance on the Progress in Achieving English Language Proficiency indicator. However, we do not believe that the statute allows the Department to require States to apply their minimum n-sizes at the school level. We note that States may average data across grades and school years under § 200.20(a), summing the number of students with available data in order to meet the State's minimum n-size and ensure appropriate school-level accountability for student subgroups, and we encourage States to consider this practice as a way to maximally include English learners (as described further in response to comments we received on §§ 200.17 and 200.20).

Changes: None.

Comments: One commenter did not support the reference to student growth percentiles in proposed § 200.14(b)(4)(ii) as an example of a potential measure for the Progress in Achieving English Language Proficiency indicator that would be valid and objective. The commenter attested that student growth percentiles may be an inappropriate measure for older, recently arrived English learners.

Discussion: We continue to believe that student growth percentiles are an appropriate example of a measure for the Progress in Achieving English Language Proficiency indicator and note that States have final discretion over the measure or measures selected for use in this indicator, so long as they meet all applicable statutory and regulatory requirements. However, we are revising § 200.14(b)(4)(i) to further clarify our intent that other methods of measuring progress are also permitted, so long as they assess progress toward achieving ELP for an English learner from the prior year to the current year.

Changes: We have revised § 200.14(b)(4)(i) to indicate that the objective and valid measures of progress for English learners toward ELP are based on students' current year performance on the ELP assessment as compared to the prior year.

Comments: One commenter stated that requiring the measurement of the Progress in Achieving English Language Proficiency indicator on an annual basis is inconsistent with the statute.

Discussion: Annually measuring performance on the Progress in Achieving English Language Proficiency indicator is fully consistent with section 1111(c)(4)(B) of the Act, which requires all indicators to be annually measured for all students and subgroups of students. The exception included in the statute, which may have misled the commenter, is not an exception to the requirement for *annual* measurement; rather, it is an exception to the requirement for *disaggregation.* The indicator for Progress in Achieving

English Language Proficiency is based only on the English learner subgroup and is not required to be further disaggregated by the other categories of students described in § 200.16(a)(2). We have revised § 200.14(a)(1) to clarify this statutory exception to the requirement for disaggregation of indicators.

Changes: We have revised § 200.14(a)(1) and (c)(3) to specify that all indicators must be disaggregated for each subgroup, with the exception of the Progress in Achieving English Language Proficiency indicator.

Comments: One commenter recommended that the Department require that States use a measure in the Progress on Achieving English Language Proficiency indicator based on reducing the number of students who are long-term English learners in middle school and high school.

Discussion: We appreciate the commenter's suggestion, but note that requiring additional measures within this indicator for English learners, particularly those that are not inclusive of all English learners and only include the progress of a subset of English learners, would be inconsistent with section 1111(c)(4)(B)(iv) of the ESEA, as amended by the ESSA.

Changes: None.

School Quality or Student Success Indicator

Comments: Several commenters supported the inclusion of requirements for School Quality or Student Success indicators in the proposed regulations, generally expressing appreciation for a more holistic approach to accountability under the ESSA that looks at indicators beyond test scores and graduation rates. A number of commenters continued to be concerned that accountability systems at the State level were focused solely on assessment results and graduation rates, and one commenter was concerned that States were only required to include one measure beyond standardized tests.

Some commenters generally recommended that States be given broad flexibility in developing and implementing indicators of School Quality or Student Success within their new statewide accountability systems.

Discussion: We agree with commenters that the inclusion of the School Quality or Student Success indicator(s) in the statewide accountability systems required by the ESEA, as amended by the ESSA, presents an opportunity for States to develop robust, multi-measure accountability systems that help districts and schools ensure each student has access to a well-rounded education and that take into account factors other than test scores and graduation rates in differentiating school performance. Given that States must include indicators beyond academic achievement and graduation rates, we disagree with commenters who asserted that accountability systems are solely focused on these factors. We recognize that the statute requires only one School Quality or Student Success indicator, but anticipate that most States will take advantage of statutory flexibility to develop or adopt multiple indicators, particularly in view of the examples included in the statute itself.

Changes: None.

Comments: Some commenters suggested that the Department add a requirement that States hold schools accountable for providing students with access to programs that address particular needs of students, including access to arts, music, and world language programs, in order to support development of the whole child.

Discussion: We share the commenters' interest in ensuring that all students receive a well-rounded education that will prepare them for success beyond the classroom. However, the Department is statutorily prohibited from mandating curricula either directly or indirectly, as such decisions are a State and local responsibility.

Changes: None.

Comments: One commenter opposed the use of ''Standard Core'' measures within the School Quality or Student Success indicator because such measures lacked empirical evidence.

Discussion: While we appreciate the commenter's concern about the use of measures that lack evidence, we are not clear which measures the commenter is referencing; therefore, we cannot respond to the comment.

Changes: None.

Comments: One commenter raised specific questions about whether, if a State used a survey to collect data on its School Quality or Student Success indicator, the State must survey all students or whether the data must be reflective of all students, or only those that are full academic year students. Additionally, the commenter sought clarity about whether a State could choose to measure only some grades within a range, so long as all schools in the State had one or more of the grades to be measured. For example, the commenter wanted to know if a State could measure a School Quality or Student Success indicator for grades kindergarten, 3, and 5, instead of each grade in a kindergarten–5 school.

Discussion: We appreciate the commenter's request for clarity about implementation of the specific indicators and measures within the statewide accountability system, but believe that non-regulatory guidance is a more appropriate way to address such questions. Generally, the ESEA, as amended by the ESSA, and § 200.14 of the regulations recognize that some indicators will not include all grades in a school. For example, the Graduation Rate indicator only includes the results of students that are part of the cohort of students graduating in a given year, and the Academic Achievement indicator only includes the results of students taking assessments in specific grades (*i.e.,* grades 3–8 and one grade in high school). Therefore, it does not seem unreasonable that an indicator of School Quality or Student Success would only include the results of a specific grade. For example, a State may choose to use as an indicator, for middle schools, the percentage of eighth grade students that have already received credit for a course such as Algebra I. To the specific question about whether States must include only those students who are full academic year students in measuring the School Quality or Student Success indicator, section 1111(c)(4)(F) of the ESEA, as amended by the ESSA, allows a State to exclude the performance of students who do not attend the same school within an LEA for at least half of a school year on the Academic Achievement, Academic Progress, Progress in Achieving English Language Proficiency, and the School Quality or Student Success indicators for accountability purposes. However, all students should be included for the purposes of reporting performance on State and LEA report cards under §§ 200.30 and 200.31.

Changes: None.

Comments: Some commenters suggested the Department require States to undertake stakeholder consultation specific to the development of meaningful indicators of School Quality or Student Success. For example, one commenter recommended the Department require States to convene summer and other out-of-school partners for input, because these stakeholders have expertise in supporting and measuring students' social-emotional development. Other commenters recommended that States be required to consult with the diverse community of professionals that contribute to student success, including instructional support staff.

Discussion: We agree with commenters that States should engage in robust and meaningful consultation with diverse stakeholders related to the development or adoption of the State's

indicators of School Quality or Student Success. In fact, the Secretary issued a Dear Colleague Letter to States on June 22, 2016, to emphasize the importance of early and meaningful stakeholder engagement.[5] States should be working now with a broad array of stakeholders on formulating new statewide accountability and support systems. Additionally, under §§ 299.13 and 299.15, States are required to consult with many stakeholders, including teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals, as well as community-based organizations, in the development of the State plan. One component of that plan is a description and information about which indicators the State plans to use in its statewide accountability system, including School Quality or Student Success indicators. The Department encourages States to engage stakeholders meaningfully in the development of State plans, including School Quality or Student Success indicators, and believes that existing consultation and State plan requirements provide sufficient opportunity for input on State selection of these indicators; therefore, we decline to add further requirements specific to this category of indicators to the final regulations.

Changes: None.

Comments: A number of commenters suggested the Department require States to hold schools accountable for a wide range of specific indicators of School Quality or Student Success. For example, commenters suggested that States be required to hold schools accountable for the presence of wrap-around services, access to preschool, and career and technical programs.

Other commenters suggested the Department provide additional examples of measures and indicators of School Quality or Student Success within the regulatory requirements but not require States to use specific indicators. For example, these commenters suggested that the Department highlight health-based measures, specific measures of school climate and school discipline, and measures of participation in advanced or gifted programs.

Other commenters expressed interest in examples, which could be made available either in regulation or non-regulatory guidance, of valid and reliable indicators that could measure School Quality or Student Success and support equity and excellence, as well as tools that may be used to measure performance on these indicators (*e.g.,* existing student survey tools).

Discussion: We appreciate the strong interest of commenters in requiring or highlighting a wide range of measures that States could include in their indicators of School Quality or Student Success, as well as the recognition that States likely will need assistance in selecting high-quality indicators. However, we believe that requiring the inclusion of specific measures would be inconsistent with the statute, and we believe that non-regulatory guidance is a more appropriate vehicle for offering additional examples and tools to help States select valid, reliable, and comparable indicators of School Quality or Student Success. Therefore, we decline to include additional examples of indicators of School Quality or Student Success, beyond the list in § 200.14(b)(5), which includes only those examples provided in section 1111(c)(4)(B)(v) of the ESEA, as amended by the ESSA. We plan to issue non-regulatory guidance that will provide additional examples of indicators of School Quality or Student Success that States may choose to include in statewide accountability systems.

Changes: None.

Comments: Several commenters provided feedback or recommendations related to the examples of School Quality or Student Success indicators the Department listed in the preamble of the NPRM, with some expressing concern that the examples could preclude or discourage the use of other indicators and other commenters highlighting specific concerns or drawbacks with the examples and suggesting alternatives.

Discussion: While we appreciate the feedback provided by commenters on such examples and will consider this feedback in any future guidance on the selection and implementation of indicators of School Quality or Student Success, the examples were provided in the preamble of the NPRM and not in the regulatory requirements. Therefore, the Department declines to make any regulatory changes based on this feedback.

Changes: None.

Comments: Several commenters requested that the Department require States to define and measure school climate within specific parameters if the State chooses to use school climate as an indicator of School Quality or Student Success. For example, some commenters encouraged the Department to define positive school climate and safety and offer multiple ways of measuring data, including student surveys and through the use of school discipline data.

Discussion: We appreciate the commenters' efforts to encourage the selection and use of meaningful, high-quality, and readily available measures of school climate in States that use such measures in one or more indicators of School Quality or Student Success. We believe that decisions about which measures to include are best made at the State level and encourage States to meaningfully engage stakeholders in considering them.

Changes: None.

Comments: A few commenters wanted to ensure that, in establishing and collecting data on indicators of School Quality or Student Success, States do not collect data regarding student social emotional factors, beliefs and behaviors, or other information beyond the scope of the school's purview, or use such information for accountability purposes. Another commenter suggested the Department clarify that indicators should not require any additional assessments beyond what is already required by law in reading and math.

Discussion: We appreciate the commenters' concern that a State may establish and develop an indicator of School Quality or Student Success that will require the State to collect additional data, consistent with the statutory requirement to measure and report on this indicator. States must still meet the requirements for protecting personally identifiable information described in the statute and under § 200.17. Because States are best positioned to determine whether an additional assessment or tool is needed to determine a student's performance on its particular School Quality or Student Success indicator(s), we decline to limit State discretion in this area.

Changes: None.

Comments: Many commenters provided feedback on the proposed requirement in § 200.14(d) that any measure used within a State's indicators of Academic Progress and School Quality or Student Success be supported by research that performance or progress on such a measure is likely to increase student achievement, or at the high school level, graduation rates. Some suggested eliminating the requirement that the School Quality or Student Success indicator be supported by such research, because it would prevent States from using measures of school climate or safety, parent engagement, or other measures that they believe may not be directly linked to

[5] See: *http://www2.ed.gov/policy/elsec/guid/secletter/160622.html.*

academic achievement. These commenters also were concerned that the requirement restricts State flexibility to choose appropriate indicators, results in a continued emphasis on test-based accountability, is contrary to the ESSA's inclusion of multiple indicators beyond assessment results, and goes beyond the authority granted to the Secretary. Another commenter noted that the statute did not include an evidence requirement for these indicators as it did other parts of the statewide accountability system. A few commenters also asserted that the proposed requirement violated sections 1111(e)(1)(B)(iii)(IV) and (V) of the ESEA, as amended by the ESSA.

Other commenters supported the proposed requirement because it ensures that measures within each indicator are likely to close educational achievement gaps, consistent with the purpose of title I of the ESEA. Of those commenters that supported the requirement, one recommended adding that the indicators should not only be linked to student achievement, but would also be appropriate for accountability purposes. Some commenters supported the requirement but recommended modifying the regulations to allow States to demonstrate that proposed measures used in indicators of School Quality or Student Success are supported by research that performance or progress on such measures is likely to increase at least one of a variety of outcomes beyond student achievement and graduation rates, including student educational outcomes, college completion, postsecondary or career success, employment or workforce outcomes, civic engagement, military readiness, student access to and participation in well-rounded education subject areas, or student learning and development. Finally, one commenter suggested that States be required to demonstrate that the indicator they select to use in middle school is linked to student achievement or graduation rates because waiting until high school to focus on indicators that are linked to graduation is too late.

Discussion: The requirement that measures used for indicators of Academic Progress and School Quality or Student Success be supported by research demonstrating a link to increased student achievement was not intended to limit such measures to those that improve State assessment results. Rather, our intention was to include a wide variety of measures of student learning such as grade point average, course completion and performance, or credit accumulation. We maintain that a requirement linking indicators of School Quality or Student Success to student outcomes is critical to fulfill the goal of title I to close educational achievement gaps and to reasonably ensure compliance with the more specific requirements in section 1111(c)(4) that the State's accountability system should improve ''student academic achievement.'' Accordingly, this requirement falls squarely within the scope of title I, part A of the ESEA, as amended by the ESSA, consistent with section 1111(e) and is consistent with the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA.

Further, these requirements do not contravene the provisions in sections 1111(e)(1)(B)(iii)(IV)–(V) of the ESEA, as amended by the ESSA, because they do not prescribe either the weight of any measure or indicator or the specific methodology that States must use to meaningfully differentiate and identify schools.

However, we recognize that many measures may be supported by research demonstrating a positive impact on a broader array of student outcomes that are related to college and career readiness and are revising § 200.14(d) accordingly.

Changes: We have revised § 200.14(d) to provide States with additional flexibility to demonstrate that the Academic Progress and School Quality or Student Success indicators are supported by research that performance or improvement on such measures is likely to increase student learning, like grade point average, credit accumulation, or performance in advanced coursework, or, for measures within the indicators at the high school level, graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.

Comments: None.

Discussion: In revising the requirement under § 200.14(d), consistent with the discussion directly above, we determined that an additional change would clarify the requirement in order to ensure States can comply with the requirements in 1111(c) of the ESEA, as amended by the ESSA, and § 200.14. In order to more closely align with the purpose of the accountability system and to meaningfully ensure that measure used within the Academic Progress and School Quality or Student Success indicators are likely to increase student learning, consistent with the previous discussion, we are clarifying that a State must demonstrate that each of these indicators is supported by research that high performance or improvement on such measures is likely to increase student learning, or for measures within indicators at the high school level, graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.

Changes: We have revised § 200.19(d) to clarify that each indicator of Academic Progress and School Quality or Student Success must be supported by research that ''high'' performance or improvement on such measures is likely to increase student learning.

Other Indicator Requirements

Comments: A few commenters recommended that the Department include additional requirements in the final regulations related to the selection and use of accountability indicators, including requirements related to ensuring that measures are valid and reliable for the purposes for which they are being used and are developmentally appropriate. Another commenter encouraged the Department to avoid further defining comparability due to pending innovations in how comparability might be demonstrated.

One commenter offered specific guidance for the Department and States to consider in identifying or selecting research-based, non-academic, or non-cognitive School Quality or Student Success indicators.

Discussion: We appreciate the commenters' request for further clarification around the requirements for accountability indicators. We believe it will be important to carefully consider the validity, reliability, and comparability of each State's indicators within the broader context of its statewide accountability system through our State plan review process and corresponding peer review, but we decline to add new regulatory requirements in this area. We will consider this input in the context of non-regulatory guidance.

Changes: None.

Comments: Some commenters opposed the requirement in proposed § 200.14(c)(2) that States measure each indicator in the same way across all schools, except that the indicators of Academic Progress and School Quality or Student Success may vary by grade span. One commenter was concerned that this requirement dilutes local flexibility to select measures that may be more appropriate given a school's local context. Other commenters particularly appreciated the flexibility to vary certain indicators by grade span, because they believed this would allow States to use a broader array of

indicators rather than only indicators that were relevant to all grades.

Discussion: While we appreciate the concern that this does not provide States with an opportunity to vary indicator measurement across schools broadly, we believe that in order to ensure indicators are comparable and that accountability determinations are fair and equitable across schools and districts, the measures within those indicators must be measured in the same way. The regulations provide States with flexibility beyond that in the statute—to vary the Academic Progress indicator across grade spans—but the Department declines to allow States to measure performance on indicators differently across schools or districts, or to permit States to adopt a menu of measures from which districts can choose to use within an indicator.

Changes: None.

Comments: Several commenters strongly supported the requirement in proposed § 200.14(c)(3) that States disaggregate performance on each indicator by student subgroup, citing the need for such disaggregation for transparency in reporting, identification of schools with consistently underperforming subgroups for targeted support and improvement, and alignment with the statutory requirements for indicators. One commenter suggested clarifying that each indicator should be disaggregated by individual student subgroup and reflect actual student experience. That commenter was concerned that, as drafted, the regulations would permit a school to say, for example, that all members of a particular subgroup had access to AP courses, even if no members of that group were actually enrolled in AP courses. A number of commenters opposed the requirement and recommended the Department remove or modify this provision. In particular, many commenters were concerned that the requirement to disaggregate each indicator of Student Quality or Student Success would preclude a State from using indicators that cannot be disaggregated, such as teacher mentoring programs, educator engagement or school climate measures collected through an anonymized survey, and student access to resources such as dual enrollment programs, specific course sequences, or school counselors. Commenters were concerned about the latter because it would not adequately reflect differences among subgroups in actual participation in or use of such resources. Some commenters were concerned with the validity and reliability of these indicators at the subgroup level. One commenter suggested that a State should be required to disaggregate one indicator of School Quality or Student Success, but not each such indicator. Another commenter asked for clarification about whether the proposed regulations would require a State using a survey to collect demographic information for each participant.

Discussion: We appreciated hearing from commenters who supported the requirement to disaggregate results on each indicator, and we agree that this requirement is vitally important to ensuring equity and meeting other statutory requirements related to indicators. For too long, the performance of individual subgroups was hidden within State accountability and reporting systems, and the ESSA has maintained a focus on illuminating the performance of each subgroup by requiring in section 1111(c)(4)(B) that States measure each indicator for all students and separately for each subgroup of students. Additionally, in order to identify schools with consistently underperforming subgroups of students for targeted support and improvement, the State must consider the performance of individual subgroups based on each indicator. We understand that this requirement to disaggregate results on each indicator may limit to some degree a State's selection of indicators for its statewide accountability system, but the reasons for such disaggregation are compelling, and the ESSA requires this disaggregation. Therefore, we decline to make any changes. The only exception to this requirement, as discussed previously, is that the Progress in Achieving English Language Proficiency indicator need not be disaggregated by student subgroup because it is measured for only one subgroup: The English learner subgroup.

Changes: None.

Comments: While some commenters supported the proposed requirement in § 200.14(c)(4) that a State cannot use a measure more than once in its statewide accountability system, many commenters opposed this requirement. One commenter noted that a State may want to use the same measure but in a different way in another indicator. For example, a State might include proficiency, as measured by the ACT, in the Academic Achievement indicator, but a measure of the number of students who meet the ACT college and career readiness benchmark in three or more content areas as a measure of postsecondary readiness within the School Quality or Student Success indicator. Other commenters noted that States may have other reasons to use a particular measure or instrument in more than one indicator. For example, States may want to use a nationally recognized assessment to measure postsecondary readiness within the State's School Quality or Student Success indicator, but also allow LEAs to use the same assessment in lieu of a State-required high school assessment for the Academic Achievement indicator, consistent with the flexibility under the ESEA, as amended by the ESSA.

Discussion: We appreciate the commenters' concern that proposed § 200.14(c)(4) could be interpreted to prevent a State from using an applicable measure across multiple indicators. In the scenario described by the commenters, the State would not be using the same measure, but rather the same instrument, within two different indicators. The Department's intention was not to preclude a State from using different measures derived from the same instrument for more than one indicator in its statewide accountability system, as described in the ACT example cited previously. Therefore, we agree that this requirement could have the unintentional effect of limiting a State's opportunity to use measures derived from the same data source across two indicators, and we are removing the requirement.

Changes: We have removed the requirement in proposed § 200.14(c)(4).

Comments: Several commenters supported the requirement in proposed § 200.14(e) that State-selected indicators of Academic Progress or School Quality or Student Success produce varied results across schools in order to meet the statutory requirement for meaningful differentiation and to ensure that indicators provide meaningful insight into a school's performance. A few commenters were opposed to the requirement because they are concerned it would unduly limit State flexibility in selecting indicators. One commenter was concerned by the Department's language in the preamble of the NPRM that indicated average daily attendance was unlikely to show variation across schools; the commenter believes attendance is important and just because schools are all doing well on an indicator should not indicate that it would be unhelpful as a component of a statewide accountability system.

Discussion: We appreciate the support for the requirement that indicators of Academic Progress and School Quality or Student Success must produce varied results across schools. Under section 1111(c)(4)(B)(ii)(II) and 1111(c)(4)(B)(v)(I)(aa) of the ESEA,

respectively, States must ensure that Academic Progress and School Quality or Student Success indicators allow for meaningful differentiation in school performance. While the Department does not define the term meaningful differentiation, or how much variation an indicator must show, we believe that indicators in the State's system, consistent with the requirements of the law, must show varied results across schools in order to enable States to actually differentiate school performance. Given concerns that this requirement will overly limit State flexibility, which we believe may partly stem from a misinterpretation of the proposed language, we are revising § 200.14(e) to clarify that a State must demonstrate the measures in its Academic Progress and School Quality or Student Success indicators show variation across ''schools'' in the State, as the proposed language of ''all schools'' could be misinterpreted to require a different result on the selected measure for each school in the State, which was not the intent of this provision. Finally, while we think it unlikely, as suggested in the preamble of the NPRM, that average daily attendance would yield the varied results needed to meet this requirement, the regulations do not prohibit such a measure if a State can demonstrate otherwise.

Changes: We have revised § 200.14(e) to refer to variation in results across schools generally, rather than ''all schools.''

Section 200.15 Participation in Assessments and Annual Measurement of Achievement

Comments: Many commenters expressed support for the proposed regulations clarifying the actions that a State may take to ensure that all schools adhere to the 95 percent participation rate requirement on State assessments, including the 95 percent participation rate requirement for student subgroups, with one noting that this requirement was retained from NCLB. These commenters also stated that the proposed regulations are consistent with the spirit of the ESEA, as amended by the ESSA, by allowing States to determine the specific actions for schools that do not meet the 95 percent participation rate requirement while also providing flexibility for States to develop their own approaches to improving participation rates. Other commenters praised the proposed regulations for reinforcing the inclusion of all students in the State's assessment system through the 95 percent participation rate requirement. One commenter stated that the proposed regulations are critical to ensuring that States, districts, and schools take seriously the need to assess at least 95 percent of students and avoid loopholes that could undermine accountability systems. Several commenters also expressed strong support for the proposed improvement plans for schools that do not meet the 95 percent participation rate requirement, including the involvement of stakeholders such as parents and educators in developing these plans.

Discussion: We appreciate the support of these commenters for the proposed regulations on the 95 percent participation rate requirement. In reviewing the comments and proposed regulations, we have determined that the regulations could more clearly reflect the statutory requirement that each State administer academic assessments to all public school students in the State, and we are revising § 200.15(a) to better distinguish this assessment requirement from the separate accountability requirement under section 1111(c)(4)(E) of the ESEA, as amended by the ESSA. The proposed regulations focused on this requirement to annually measure, for accountability purposes, the achievement of at least 95 percent of all students and 95 percent of all students in each subgroup on reading/language arts and mathematics assessments, but did not explicitly address the requirement under section 1111(b)(2)(B)(i)(II) of the ESEA that the required assessments in reading/language arts, mathematics, and science be administered to all public school students in the State, or the requirement under section 1111(b)(2)(B)(vi)(I) of the ESEA that the State must provide for the participation of all students in such assessments. If we do not explicitly reference these requirements in the regulations, States and other stakeholders might misinterpret the regulations to mean that only 95 percent of students must be assessed on the required academic assessments, contradicting the requirements in section 1111(b)(2)(B) of the ESEA.

Changes: We have revised § 200.15(a)(1) to clarify that States are required to administer academic assessments in reading/language arts, mathematics, and science to all public school students in the State, and provide for all such students' participation in those assessments.

Comments: One commenter cited numerous benefits of ensuring high participation rates consistent with the statute and the proposed regulations, emphasizing that high-quality assessments provide essential information that can be used to inform instruction, support student learning, ensure readiness for postsecondary education, guide professional development, and target evidence-based interventions to meet the needs of students and schools. The commenter also noted that non-participation inhibits the data transparency needed to support effective monitoring and program improvement, which can have a disparate impact on students with special needs and contribute to a widening of achievement gaps. This commenter also recommended that States provide information to parents, educators, and the public regarding the consequences of non-participation in assessments under their accountability systems and include parents and other stakeholders in developing interventions and supports for schools that do not meet the 95 percent participation rate requirement.

Discussion: We appreciate and share this commenter's views on the importance of the 95 participation rate requirement. We note that the requirements for participation rate improvement plans in § 200.15(c)(1) of the final regulations include involvement by stakeholders—including principals and other school leaders, teachers, and parents—in the development of improvement plans.

Changes: None.

Comments: One commenter expressed strong support for proposed § 200.15, noting that accountability systems can be effective only when they include information on each student's performance on assessments aligned to rigorous State standards in reading/language arts and mathematics, and that there is no way to determine whether all students are meeting the long-term goals and measurements of interim progress for academic achievement required by section 1111(c)(4)(A) of the ESEA, as amended by the ESSA, without achievement data on State tests.

Discussion: We appreciate the commenter's support for the proposed regulations.

Changes: None.

Comments: Many commenters asserted that the proposed regulations on the 95 percent participation rate requirement are part of an effort to restore what they described as test-based accountability in the ESEA, as amended by the ESSA. These commenters objected to the menu of proposed actions that would be required for schools that do not meet the 95 percent participation rate requirement, describing the 95 percent requirement as an arbitrary threshold that effectively would punish schools and in turn

parents for their decisions to opt out of State assessments required by the ESEA, as amended by the ESSA.

Discussion: While the ESEA, as amended by the ESSA, promotes statewide accountability systems based on multiple measures of student and school performance, the accurate and reliable measurement of student achievement on annual State assessments in reading/language arts and mathematics remains a required component of those systems. Specifically, as part of their statewide accountability systems required by the ESEA, as amended by the ESSA, States must set long-term goals and measurements of interim progress for academic achievement in reading/language arts and mathematics under section 1111(c)(4)(A)(i)(I)(aa), as measured by the assessments in these subjects required under section 1111(b)(2). Academic achievement as measured by proficiency on these assessments also is a required indicator for State systems of annual meaningful differentiation under section 1111(c)(4)(B). In support of these requirements, the law requires annual assessments in reading/language arts and mathematics to be administered to all public school students in each of grades 3–8, and at least once between grades 9 and 12, and, separately, that States hold schools accountable for assessing at least 95 percent of their students. The 95 percent threshold is specified in section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, and both the Department and States are responsible for ensuring that all schools meet the 95 percent participation rate requirement. The final regulations, like the proposed regulations, are designed to assist States in fulfilling this responsibility, and ultimately provide States flexibility in determining how to factor participation rate into their accountability system.

Changes: None.

Comments: One commenter wrote that proposed § 200.15 undermines the clear intent of Congress to empower State and local educators to engage in a collaborative process for developing broader accountability systems based on multiple measures of performance.

Discussion: The proposed regulations on the 95 percent participation rate requirement are narrowly and appropriately targeted on ensuring that all schools meet that requirement, and do not in any way undermine or interfere with the authority or discretion of States to develop, or to engage in a collaborative process for developing, the broader, statewide accountability systems based on multiple measures of student and school performance that are encouraged by the ESEA, as amended by the ESSA. Further, the provisions of § 200.15 are wholly consistent with, and within the scope of, the provisions of title I, part A of the ESEA, as amended by the ESSA, as well as with the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, (as previously described in the discussion of *Cross-Cutting Issues*) because they are consistent with and necessary to ensure that States fulfill their responsibilities under section 1111(c)(4)(E) of the ESEA, as amended by the ESSA. As such, they also do not violate section 1111(e) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter stated that the requirements of proposed § 200.15 do not take into account current efforts by States to improve assessment participation rates or the unique circumstances that may negatively affect participation rates.

Discussion: We appreciate that many States, school districts, and schools already are engaged in efforts to increase assessment participation rates and that there are many reasons for low participation rates. However, the law requires States to factor the 95 percent participation rate requirement, for schools and subgroups of students, into their statewide accountability systems regardless of such efforts, and the proposed regulations were designed to help States implement that requirement. States may incorporate current strategies and incentives for improving participation rates that reflect local needs and circumstances into the State-determined option for factoring the 95 percent participation rate requirement into their statewide accountability systems under § 200.15(b)(2)(iv). We also note that existing State and local efforts to improve participation rates may provide a solid foundation for the school- and district-level improvement plans required by the final regulations.

Changes: None.

Comments: One commenter asserted that the proposed regulations could result in the diversion of resources from needy schools to wealthier schools due to the recent high incidence of opt outs at many wealthier schools. This commenter also stated that lower grades for typically high-performing schools due to their failure to meet the 95 percent participation rate requirement could erode support for both State accountability systems and the individuals responsible for administering those systems.

Discussion: The Department believes it is unlikely that meeting the 95 percent participation rate requirement would divert significant resources to wealthier schools; the combination of ESEA program allocation requirements and the fiscal provisions in part A of title I generally ensure that high-poverty schools continue to receive their fair share of Federal, State, and local funds. In addition, under § 200.24(a)(1), LEAs may not use section 1003 school improvement funds to serve schools identified under § 200.15(b)(2)(iii), if applicable, for targeted support and improvement due to missing the 95 percent participation rate requirement. This provision is explicitly intended to prevent the diversion of section 1003 improvement funds from schools that are identified for comprehensive or targeted support and improvement due to consistently poor student outcomes. We also note that the integrity of statewide accountability systems is at greater risk when schools—regardless of general beliefs about their quality or performance—do not meet the 95 percent participation requirement than when they receive lower performance determinations reflecting the lack of reliable data for accurately measuring performance against State-determined college- and career-ready academic standards.

Changes: None.

Required Denominator for Calculation of Academic Achievement Indicator

Comments: Several commenters objected to the provisions that require States to take specific actions for schools that fail to meet 95 percent participation rates, as well as the school and district improvement plans in proposed § 200.15(c). These commenters stated that proposed § 200.15(b)(1), which incorporates the statutory requirement that non-participants be counted as non-proficient for the purposes of annual meaningful differentiation, is sufficient penalty for failing to assess at least 95 percent of all students and all students in each subgroup.

Discussion: Section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, specifies two distinct consequences for failure to meet the 95 percent participation rate requirement: (1) Counting non-participants in any school with a participation rate below 95 percent as non-proficient for purposes of calculating the Academic Achievement indicator (by ensuring that the denominator for such calculation, at a minimum, includes at least 95 percent of students enrolled in the school); and (2) factoring the requirement into

statewide accountability systems. The Department disagrees with the commenters that the second statutorily specified consequence should be ignored. The final regulations, like the proposed regulations, are designed to support effective implementation of the requirement that States factor the 95 percent participation requirement into their accountability systems.

Changes: None.

Comments: Several commenters expressed concern about proposed § 200.15(b)(1), which incorporates statutory requirements related to the denominator that must be used for calculating the Academic Achievement indicator, essentially requiring non-proficient scores for most non-participants for the purpose of annual meaningful differentiation of schools. In particular, commenters suggested that this requirement would unfairly reduce school performance ratings for schools in which parents are exercising their legal rights to opt their children out of State assessments required by the ESEA, as amended by the ESSA—actions over which districts and schools have no control. One commenter asserted that proposed § 200.15(b)(1) exceeded the Department's legal authority.

Other commenters expressed support for proposed § 200.15(b)(1) and encouraged the Department to clarify in the final regulations how it must be implemented, including that students who opt out of State assessments must be part of the denominator for the Academic Achievement indicator calculation and that the only students who may be excluded from the denominator are those who were enrolled in a school for less than half of the academic year, as provided under proposed § 200.20(b).

Discussion: The final regulations retain the requirement that the denominator used for calculating the Academic Achievement indicator must include, for all students and for each subgroup of students, at least 95 percent of all such students in the grades assessed who are enrolled in the school each year. This requirement has the effect of ensuring that participation rates below 95 percent not only could have a significant impact on a school's performance on the Academic Achievement indicator but could also affect the school's overall determination in a State's accountability system. We further note that this provision is incorporated directly from the statute, specifically from the requirement in section 1111(c)(4)(E)(ii) of the ESEA, as amended by the ESSA. We appreciate that it would be helpful to provide States with assistance in implementing this requirement and plan on providing clarification in non-regulatory guidance. Finally, requiring all students that opt-out of State assessments to be counted as non-participants would be inconsistent with the statute, which would not count such students as non-participants until a school's participation rate falls below 95 percent in a given year.

Changes: None.

State Actions To Factor Participation Rate Into Statewide Accountability Systems

Comments: Numerous commenters stated that the proposed actions that States would be required to take in schools that do not test 95 percent of their students in reading/language arts and mathematics, specifically lowering the rating of such schools in statewide accountability systems or identifying them for targeted support and improvement, are not consistent with other requirements of the Act. More specifically, these commenters asserted that proposed § 200.15 conflicts with section 1111(b)(2)(K) of the ESEA, as amended by the ESSA, which states that the assessment requirements in section 1111(b) do not preempt State or local law regarding the decision of a parent to not have his or her child participate in the assessments required by Part A of title I of the ESEA, as amended by the ESSA. Some commenters further expressed the belief that the proposed regulations appear to be intended to minimize parental resistance to what they described as the overuse and misuse of standardized tests, while others emphasized that districts and schools should not be penalized for the actions of parents. A few commenters stated that by not taking into account the opt-out movement, the proposed regulations could undermine the legitimacy and public acceptance of statewide accountability systems. These commenters generally recommended that the proposed regulations on assessment participation be revised to restate statutory requirements, including the right to ''opt out'' of ESEA assessments, and permit States to determine how to factor the 95 percent participation requirement into their accountability systems, or that the Department not issue any regulations on meeting the 95 percent participation rate requirement.

Discussion: We recognize that section 1111(b) of the ESEA, as amended by the ESSA, protects the right of parents to withhold children from participation in State assessments in reading/language arts and mathematics. At the same time, the law requires that all students participate in annual assessments in English language arts and mathematics in each of grades 3–8, and at least once between grades 9 and 12, and that States hold schools accountable for assessing at least 95 percent of their students. Ensuring that States, LEAs, and schools have reliable, accurate assessment data on all students and all subgroups of students is essential to design meaningful accountability systems, to provide teachers and parents the information they need to improve instruction and student outcomes, and to guide States and districts in providing schools the resources, support, and assistance they need to make sure that all students graduate high school ready for college and careers.

The proposed regulations provide a menu of options for States to use to help ensure that all schools meet the statutory 95 percent participation rate requirement. We believe these options will help protect the integrity of a State's accountability system; ensure that participation rate is included in a State's accountability system in a meaningful, transparent manner; and ensure that parents and teachers get the information they need to support students. For these reasons, the final regulations retain a menu of actions from which States may select for schools that do not test at least 95 percent of their students in reading/language arts and mathematics.

Changes: None.

Comments: A number of commenters requested that the Department strengthen the State options for addressing low assessment participation rates. One commenter provided specific recommendations for more rigorous actions by States for schools that miss the 95 percent participation rate requirement. For example, this commenter suggested strengthening improvement plan consultation requirements by requiring the inclusion of at least one parent from each subgroup that does not meet the 95 percent participation rate requirement. This commenter also expressed concern that assigning a lower summative rating to a school that missed the 95 percent participation rate requirement might result in a relatively inconsequential reduction, such as from a ''B+'' to a ''B'' rating, and called for the final regulations to ensure that a State's actions lead to a meaningful reduction in the rating of such schools. The same commenter recommended that States be required to provide technical assistance aimed at helping schools explain to parents why assessment participation is important for the integrity of the State's

accountability system as well as how that system is used to provide supports for students and schools. Other commenters recommended clarifying that States may take more rigorous actions in schools that do not meet the 95 percent participation rate requirement than those included in the proposed regulations.

Discussion: The Department appreciates support from commenters for strong actions to ensure that all schools meet 95 percent participation rates, but does not believe that more prescriptive requirements in this area would be consistent with the ESEA, as amended by the ESSA. We also believe that some of the recommended changes are unnecessary; for example, the requirement that participation rate improvement plans be developed in partnership with parents is likely to lead to involvement from parents from subgroups that do not meet the 95 participation requirement. Improvement plans also are likely to include efforts to explain to parents why assessment participation is important for the effective functioning of State accountability systems, including the delivery of supports for students and schools. Finally, because the proposed regulations already require States to take ''at least one'' of the required actions for schools that miss the 95 percent participation, we believe the regulations are clear that States may take more rigorous actions, including more rigorous State-determined actions, and that this point would be more appropriately reiterated through non-regulatory guidance.

Changes: None.

Comments: Many commenters asserted that the proposed regulations exceed the Department's authority under the ESEA, as amended by the ESSA, to determine how and the extent to which a State factors the 95 percent participation rate requirement into its system of annual meaningful differentiation of schools. In support of their contention, commenters specifically cited section 1111(e)(1)(B)(iii)(XI), which prohibits the Secretary from prescribing the way in which a State factors the 95 percent participation rate requirement into its statewide accountability system. Several commenters also noted that while the assessment participation rate was a required accountability indicator under NCLB, it was not included among the indicators required by section 1111(c)(4)(B) of the ESEA, as amended by the ESSA. These commenters also stated that there is no basis in statute for the proposed requirements for school and district improvement plans to increase participation rates, and recommended the elimination of all proposed actions that States, districts, and schools would be required to take regarding schools that fail to assess at least 95 percent of all students and students in each subgroup.

Discussion: The requirements in § 200.15(b)–(c) for State actions to factor participation rates into their accountability systems and improve assessment participation in schools and LEAs are not inconsistent with section 1111(e)(1)(B)(iii)(XI) of the ESEA, as amended by the ESSA, because they do not prescribe the way in which a State must factor the 95 percent participation requirement into its statewide accountability system. The final regulations, like the proposed regulations, provide options for how a State may factor the 95 percent participation rate requirement into its accountability system, including a State-determined option. In addition, each State has significant discretion regarding the precise manner in which it incorporates its selected option into its overall accountability system. Thus, we do not specify the way in which a State incorporates the 95 percent participation rate requirement into its accountability system.

Further, the provisions of § 200.15 are consistent with, and within the scope of, the provisions of title I, part A of the ESEA, as amended by the ESSA, as well as with the Department's rulemaking authority under GEPA, the DEOA, and Section 1601(a) of the ESEA, as amended by the ESSA (previously described in the discussion on Cross-Cutting Issues), because they are necessary to reasonably ensure that States factor participation rate into statewide accountability systems, as required in section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, and comply with the statutory requirement in section 1111(1)(b)(2)(B)(i) of the ESEA, as amended by the ESSA, that a State assess all public elementary and secondary school students in the State. As such, they also do not violate section 1111(e).

Finally, the proposed participation rate improvement plans are intended to support effective State and local implementation of the statutory 95 percent participation rate requirement through a collaborative, locally determined improvement process designed to minimize the need for more heavy-handed compliance actions by State or Federal authorities. Consequently, we believe the improvement plan requirements in the final regulations also are fully appropriate and consistent with the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter expressed support for proposed § 200.15(b)(2)(iii), which provides the option that a State may identify schools that miss the 95 percent participation rate requirement for targeted support and improvement. However, the commenter said this result should only be permitted if the identified schools are eligible to receive section 1003 school improvement funds to support implementation of their targeted support plans aimed at improving assessment participation.

Discussion: The Department declines to make this change because the number of schools that could be identified by a State for targeted support and improvement due to missing the 95 percent participation rate requirement could reduce the availability of section 1003 improvement funds for schools that are identified for comprehensive or targeted support and improvement due to consistently poor student outcomes.

Changes: None.

Comments: One commenter recommended that the regulations be revised to allow States to take into account the level of assessment participation and other factors (*e.g.,* the number of subgroups, the size of the participation gap, the number of years missed) in determining consequences that would potentially increase over time if a school continues to miss the 95 percent participation rate threshold. Similarly, a few commenters variously recommended giving States flexibility to design multiple State-determined actions, including escalating interventions and supports that may be less rigorous than those in proposed § 200.15(b)(2). Another commenter suggested that States be permitted to vary the weight given to the 95 percent participation rate requirement, with less severe consequences if failure to meet the requirement results from parents opting their children out of State assessments required by the ESEA.

Discussion: The Department believes that the final regulations governing accountability for the 95 percent participation rate, like the proposed regulations, provide considerable flexibility for States to take into account the circumstances attending each school that fails to meet the 95 percent participation rate requirement. For example, under the final regulations, a State could assign a lower summative determination to a school that falls below the 95 percent threshold for one subgroup, while both assigning a lower determination *and* identifying for targeted support and improvement a

school that fails to meet the 95 percent participation requirement for multiple subgroups. A State also could propose a set of State-determined actions that includes escalating interventions depending on the extent to which or how long a school has missed the 95 percent participation rate requirement. These actions, consistent with the section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, must be included in the State's accountability system for meaningfully differentiating schools and identifying schools for support and improvement. In this context it is important to note that States have discretion under the final regulations to take more rigorous actions for schools that consistently fail to meet the 95 participation rate requirement or that miss the 95 percent threshold by a wide margin, or for all students or multiple subgroups of students in the school. However, we agree that States would benefit from greater flexibility to devise their own State-determined actions based on the scope and extent to which a school misses the 95 percent participation rate, and we are revising the final regulations accordingly. We further note that the required improvement plans also provide an opportunity for States and districts to take into account local circumstances, such as by varying the scope and rigor of such plans depending on the severity of the participation rate problem in a particular school.

While we agree that States should have flexibility to determine the action taken in the school based on the scope or extent to which a school fails to meet the participation rate requirement, we disagree that States should be permitted to take less rigorous actions based on the reason for a school failing to meet the 95 percent participation rate requirement. Ensuring that all schools meet this requirement is essential for the integrity of the statewide accountability systems required by the ESEA, as amended by the ESSA, and permitting interventions that are not sufficiently rigorous risks sending the message that it is acceptable to miss the 95 percent participation rate requirement in some circumstances—an outcome that would not be consistent the requirements of the ESEA, as amended by the ESSA.

Changes: We have revised § 200.15(b)(2)(iv) to specify that an State may factor the 95 percent participation rate requirement into its system of annual meaningful differentiation through a State-determined action or set of actions that is ''sufficiently rigorous'' to improve a school's assessment participation so that it meets the requirement and removed the requirements for the State-determined action to be ''equally rigorous'' and result in a similar outcome as actions described in § 200.15(b)(2)(i)–(iii).

Comments: A few commenters generally supported proposed § 200.15 with the exception of language in proposed § 200.15(b)(2)(iv) that would subject any State-determined action to approval by the Department as part of the State plan review and approval process under section 1111(a) of the Act. These commenters believe that the Department's role, consistent with their interpretation of the statute, should be limited to reviewing, and not approving, proposed State-determined actions for schools failing to meet the 95 percent participation rate requirement.

Discussion: The requirement for Department review and approval of each State plan, which must include a description of the statewide accountability system that complies with all the requirements in sections 1111(c) and (d) of the ESEA, as amended by the ESSA, including the 95 percent participation rate requirement, is specified in section 1111(a) of the ESEA, as amended by the ESSA. Limiting the Department's role to simply reviewing proposed State-determined actions for schools that fail to meet the 95 percent participation rate requirement would be inconsistent with this statutory requirement.

Changes: None.

Comments: One commenter requested that the Department provide greater clarity to States regarding what would constitute an ''equally rigorous'' State-determined action, consistent with proposed § 200.15(b)(2)(iv), in schools that do not meet the 95 percent participation requirement for all students and all subgroups of students. Another commenter similarly expressed concern that the term ''equally rigorous'' is subject to interpretation and thus could cause confusion.

Discussion: We are revising ''equally rigorous'' to ''sufficiently rigorous'' in the final regulations, as discussed previously. Given that we have removed language regarding ''equally rigorous'' actions, there is no need to clarify this term in the final regulations, as we believe the revisions to the final regulation will support effective review and approval of any proposed State-determined action or set of actions submitted to the Department through the State plan process under section 1111(a) of the ESEA, as amended by the ESSA. We recognize there are many ways in which States could design actions that are sufficiently rigorous to improve participation rates in schools that miss the requirement under § 200.15(a)(2) and therefore decline to limit State discretion by adding more specific requirements.

Changes: None.

Comments: One commenter expressed concern that the proposed actions for schools that miss the 95 percent participation rate requirement would not permit flexibility when technical issues, such as the failure of computer networks, affect test participation rates.

Discussion: The Department would retain authority under the final regulations to address technical or logistical anomalies related to State administration of the annual assessments required by the Act that have a negative impact on the ability of schools to meet the 95 percent participation rate requirement.

Changes: None.

Comments: One commenter expressed concern that the proposed regulations would require changes to existing methods of incorporating the participation rate into statewide accountability systems.

Discussion: We believe that the final regulations related to the 95 percent participation rate requirement, like the proposed regulations, provide sufficient flexibility and discretion for States that already have rigorous methods of incorporating assessment participation rates into their statewide accountability system to use the same or similar methods to meet the requirements of these final regulations. For example, under § 200.15(b)(2)(iv), as revised in these final regulations, a State may propose, as part of its State plan under the Act, a State-determined action or set of actions to factor the 95 percent participation rate requirement into its system of annual meaningful differentiation of schools, so long as any proposed action is sufficiently rigorous to improve participation rates in any school that fails to assess at least 95 percent of all students or 95 percent of students in each subgroup so that it will meet the requirements in § 200.15(a).

Changes: None.

Comments: One commenter recommended that the final regulations include an exception to the 95 percent participation rate requirement for States that use a small n-size, on grounds that in such cases the effective participation rate for small schools or subgroups effectively becomes 100 percent.

Discussion: The Department declines to make this change. Section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, does not provide for such an exception to the 95 percent participation rate requirement.

Changes: None.

Comments: One commenter stated that the proposed regulations specifying a range of State actions to enforce the statutory 95 percent participation rate requirement are unnecessary because any school failing to meet the requirement would already be subject to State and/or Federal compliance remedies, which could include an improvement plan or other actions.

Discussion: The Department believes clear regulations and guidance that promote State and local adherence to all the requirements of the ESEA, as amended by the ESSA, better serve students, educators, and the public than compliance remedies available under applicable law and regulation. The final regulations provide a clear, uniform, and understandable framework for effective implementation of the 95 percent participation rate requirement, through collaborative efforts at the State and local levels, which will support the overall goals and purposes of statewide accountability systems under the ESEA, as amended by the ESSA, while minimizing the need for heavy-handed compliance remedies.

Changes: None.

Comments: One commenter recommended that the final regulations regarding the 95 percent participation rate requirement include flexibility to prevent schools that fail to meet the requirement from being identified for comprehensive support and improvement or targeted support and improvement if their academic performance does not support such identification.

Discussion: We believe that the menu of options in the final regulations provides sufficient flexibility and discretion to States to factor the 95 percent participation rate into their statewide accountability systems without inappropriately identifying schools for comprehensive or targeted support and improvement.

Changes: None.

Comments: One commenter recommended delaying the State actions required by proposed § 200.15 until a school has missed the 95 percent participation rate requirement for two consecutive years. This commenter asserted that such a delay would give schools time to meet the 95 percent participation rate requirement without State intervention, while ensuring that such interventions occur in schools that continue to fail to meet the requirement.

Discussion: We appreciate commenter's recommendation in response to the directed question in the NPRM aimed at soliciting additional or different ways of supporting States in ensuring that low assessment participation rates are meaningfully addressed as part of their statewide accountability systems. However, given the statutory requirement that each State administer academic assessments to all public school students in the State, we believe that falling below a 95 percent participation rate requires action as part of a State's annual system of meaningful differentiation of schools rather than what, under the commenter's proposal, would amount to little more than a warning after missing the 95 percent requirement for one year, even in cases where non-participation was widespread and significant. Waiting an additional year would jeopardize further the availability of reliable, accurate assessment data that teachers and parents need to improve instruction and student outcomes and that States, LEAs, and schools need to support timely and effective school improvement consistent with the requirements of the ESEA, as amended by the ESSA. However, consistent with the previous regulations implementing the ESEA, as amended by the NCLB, we are revising the final regulations to permit States to average a school's participation rates over two to three years for the limited purpose of meeting the requirements of § 200.15(b)(2), as described in revisions to § 200.20(a) under the subheading *Data Averaging.*

Changes: None.

Participation Rate Improvement Plans

Comments: One commenter objected to the proposed requirement that all schools not meeting the 95 percent participation rate requirement develop and implement an improvement plan designed to increase assessment participation rates. In particular, the commenter believed that States should have flexibility around this requirement relating to how many times a school has missed the 95 percent participation rate requirement, the number of subgroups involved, or the size of a school (*i.e.,* schools with small n-sizes where a school might miss the 95 percent participation requirement due to non-participation by just one or two students). Other commenters supported the proposed participation rate improvement plan requirements.

Discussion: We believe the participation rate improvement plan requirement includes much of the flexibility sought by the commenter. For example, a school that misses the 95 percent participation rate requirement by one or two students for a single subgroup may not require as rigorous or comprehensive an improvement plan as a school that has an 80 percent participation rate for the all students group. As for triggering the requirement, section 1111(b)(2)(B) of the ESEA, as amended by the ESSA, requires States to administer annual assessments in reading/language arts and mathematics to all public elementary school and secondary school students in the State and section 1111(c)(4)(E) requires States to annually measure, for accountability purposes, the achievement of not less than 95 percent of all students and all students in each subgroup of students who are enrolled in public schools. In view of these statutory requirements, we believe requiring a participation rate improvement plan for any school that misses the 95 percent participation rate in any year, for any reason is consistent with the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter recommended that schools not meeting the 95 percent participation requirement in the ESEA, as amended by the ESSA, undertake a root cause analysis to determine the reasons for low participation rates, with an emphasis on such issues as chronic absence, suspension rates, school climate, student engagement, and parental support for testing. This commenter also recommended that, in cases where low participation rates are linked to chronic absenteeism, the final regulations should encourage States to work with public agencies and community stakeholders to remove barriers to regular school attendance.

Discussion: We agree that a root cause analysis may be a useful part of a local process to develop the participation rate improvement plans required by the final regulations for schools that miss the 95 percent participation rate requirement, and that the factors noted by the commenter could negatively affect assessment participation rates. However, we decline to further prescribe the components of the required school or district assessment rate improvement plans in recognition of the fact that the scope of such plans may vary widely depending on local context, and thus schools and LEAs should have discretion to develop plans that address local needs and circumstances.

Changes: None.

Comments: One commenter expressed appreciation for the inclusion of principals and other school leaders in the consultation requirements for the improvement plans that would be required under proposed § 200.15(c)(1), but recommended that the final regulations emphasize that such plans should be developed under the

leadership of, and not just in consultation with, school principals.

Discussion: We believe that the final regulations, like the proposed regulations, provide sufficient flexibility to support strong leadership for principals in the development of participation rate improvement plans, while recognizing that in some cases other individuals or organizations (*e.g.,* the local Parent Teacher Association) could take the lead in developing such plans.

Changes: None.

Comments: One commenter requested that the Department clarify the meaning of the term ''significant number of schools'' as used in proposed § 200.15(c)(2), which requires participation rate improvement plans for districts with a significant number of schools that fail to meet the 95 percent participation rate requirement.

Discussion: The Department declines to define or offer parameters around the term ''significant number of schools'' in the final regulations because the meaning may vary depending on local context and circumstances. For example, in a medium-size district, 5 schools could constitute a significant number, while 15 schools might not be considered a significant number of schools in a large district. However, the final regulations clarify that States may consider the number or percentage of schools failing to meet the participation rate requirement.

Changes: We have revised § 200.15(c)(2) by replacing the term ''a significant number of schools'' with ''a significant number or percentage of schools.''

Comments: One commenter recommended clarifying that locally based approaches to improving test participation may be incorporated into State accountability systems.

Discussion: We believe that § 200.15(b)(2)(iv) provides sufficient flexibility to incorporate locally based approaches to improving assessment participation rates into a State-determined option for factoring participation rates into statewide accountability systems without further elaboration in the final regulations.

Changes: None.

Comments: Two commenters recommended that the improvement plan requirement in proposed § 200.15(c)(1) for schools that miss the 95 percent participation rate requirement be expanded to cover schools that fail to assess at least 95 percent of their English learners on the ELP assessment. These commenters observed that including 100 percent of English learners in ELP assessments is increasingly difficult due to a combination of the opt-out movement and high mobility among English learners, and asserted that requiring improvement plans for schools that do not assess at least 95 percent of their English learners on the ELP assessment would help improve participation rates on that assessment. These commenters further stated that such a requirement would align accountability requirements under the ESEA, as amended by the ESSA, while holding English learner students to a standard no higher than that of all other students. Another commenter requested clarification on whether the 95 participation rate requirement applies to ELP assessments.

Discussion: The 95 percent participation rate requirement is statutorily limited to the reading/language arts and mathematics assessments required by section 1111(b)(2)(v)(I) of the ESEA, as amended by the ESSA, and there is no basis for applying this requirement to ELP assessments. Moreover, such application, even to the extent of requiring participation rate improvement plans for schools that fail to administer ELP assessments to 95 percent of their English learner students, would send a confusing message to States, districts, and schools about the requirement under section 1111(b)(2)(G)(i) of the ESEA, as amended by the ESSA, to administer ELP assessments to all such students. In addition, any regulatory action that might be interpreted as permitting schools to administer ELP assessments to fewer than 100 percent of English learners would likely be judged inconsistent with applicable civil rights laws.

Changes: None.

Other Comments on Participation in Assessments

Comments: One commenter recommended that the Department clarify proposed § 200.15(d)(2) to specify that disciplinary actions may not be used to systematically exclude students in any subgroup of students from participating in State assessments required by the ESEA.

Discussion: The Department agrees that disciplinary actions should not be used to exclude students from participating in assessments, but declines to enumerate in the final regulations the various methods and practices that may result in systematic exclusion of students from assessment participation. Such examples are more appropriate for non-regulatory guidance. We are, however, revising the final regulations to clarify that systematic exclusion of students from the assessment system on any basis is not permitted, and that students may not be systematically excluded on State assessments any content area: Reading/language arts, mathematics, or science.

Changes: We have revised § 200.15(d)(2) to clarify that a State, LEA, or school may not systematically exclude students, including any subgroup of students described in § 200.16(a), from participating in the State assessments in reading/language arts, mathematics, and science.

Comments: One commenter urged the Department to clarify in the final regulations that proposed § 200.15(d)(3), which permits counting a student with the most significant cognitive disabilities who is assessed based on alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA, as a participant for purposes of meeting the 95 percent participation rate requirements only if a State has developed the guidelines required by section 1111(b)(2)(D)(ii) of the ESEA, as amended by the ESSA, and ensures that its LEAs adhere to such guidelines, applies only for the purposes of calculating the participation rate. The commenter also sought clarification that students who take the alternate assessment, but are not counted as participants for calculating the participation rate because the State has not developed appropriate guidelines for IEP teams, should be counted as participants for calculating proficiency.

Discussion: We appreciate the concerns of the commenter but believe that the recommended clarifications are more appropriately addressed in non-regulatory guidance.

Changes: None.

Comments: One commenter recommended revising the final regulations to use the 95 percent participation rate requirement to increase school-level accountability for students who drop out and to incentivize reengagement efforts. More specifically, the commenter recommended that students who do not participate in assessments, and who have not been removed from a high school cohort because there is no documentation to support their removal as outlined in § 200.34(b)(3), be included in the denominator when calculating the 95 percent assessment participation rate.

Discussion: The Department appreciates and shares the commenter's commitment to increase high school graduation rates. However, we decline to make the recommended changes

because they are not consistent with the overall purpose of the 95 percent participation rate requirement. That purpose is to help ensure the highest possible rates of student participation in the assessments in reading/language art and mathematics that are used in statewide accountability systems under the ESEA, as amended by the ESSA, and not to serve as a lever or incentive to improve other student outcomes.

Changes: None.

Comments: Two commenters recommended revising proposed § 200.15 to recognize the right of Native American students receiving instruction in Native American language medium schools to opt out of State assessments in reading/language arts and mathematics that are administered in English. These commenters also requested that States be required to exclude such students from the 95 percent participation rate requirement if the State lacks an appropriate assessment in the Native American language.

Discussion: The Department declines to make these changes because the ESEA, as amended by the ESSA, does not provide for an exception to the 95 percent participation rate requirement for Native American students receiving instruction in Native American language medium schools. In addition, a policy of excluding certain students from statewide assessments would be inconsistent with the purpose of title I to close educational achievement gaps.

Changes: None.

Comments: None.

Discussion: In reviewing the proposed regulations, the Department believes it is helpful to clarify the reason recently arrived English learners may be counted as participants on the State's reading/language arts assessment if they take either the State's reading/language arts assessment or the State's English language proficiency assessment; specifically, this flexibility applies to recently arrived English learners that may be exempted from one administration of the State's reading/language arts assessment, as described in § 200.16(c)(3)(i)(A), and not to other recently arrived English learners who take the State's reading/language arts assessment in each year of their enrollment in U.S. schools. This clarification is necessary because the ESEA, as amended by the ESSA, added an additional exemption that States may consider for holding schools accountable for the performance of recently arrived English learners, which requires assessment in reading/language arts in the first year of the student's enrollment in U.S. schools as described in § 200.16(c)(3)(ii).

Changes: We have revised § 200.15(d)(4) to clarify that this provision applies to recently arrived English learners who are exempted from one administration of the State's reading/language arts assessment consistent with § 200.16(c)(3)(i)(A).

Section 200.16 Subgroups of Students

Comments: A few commenters suggested that the Department replace the word ''subgroups'' with the term ''student groups'' throughout the regulations. One commenter explained that the term subgroup is an outdated term that implies that some groups are lesser than others.

Discussion: We appreciate the commenters' suggestion, but believe it is beneficial to use the same terminology contained in the statute. Therefore, throughout the regulations, we refer to subgroups of students.

Changes: None.

Comments: Two commenters asked that the Department modify proposed § 200.16 to specify that a student who meets the definition of English learner in section 8101(20) of the ESEA and who is instructed primarily through a Native American language be included in the English learner subgroup for the entire time that the student is taught in a Native American language, and that such students who transfer to a school in which instruction is in English may be considered as newly-enrolled English learners.

Discussion: As the commenters note, the term ''English learner'' is defined in section 8101(20) of the ESEA, as amended by the ESSA. That definition includes provisions under which a student who is Native American or Alaska Native and who comes from an environment where a language other than English has had a significant impact on his/her level of English language proficiency is considered an English learner. States include students in the English learner subgroup for accountability as long as they are ''English learners.'' Specifically, under section 3113(b) of the ESEA, as amended by the ESEA, and §§ 299.13(c)(2) and 299.19(b)(4) of the final regulations, States must establish standardized statewide entrance and exit procedures for English learners, which, as in § 299.19(b)(4) of the final regulations, require English learner exit criteria to be the same criteria used to exit students from the English learner subgroup for accountability purposes. The issue of when a student is no longer an ''English learner'' is not dependent on the classroom language of instruction. Because the exit procedures are not related to the language of instruction, there is no need for the specific provisions requested. In addition, we note that § 200.16(c) permits States to include in the English learner subgroup the performance of former English learners for four years, for purposes of calculating any indictor that is based on data from State assessments under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA.

Changes: None.

Combined Subgroups of Students (''Super Subgroups'')

Comments: Many commenters expressed support for what they believed was a prohibition against combined subgroups of students in the proposed regulations. One commenter suggested that § 200.16(c) be clarified to explain that a State may not combine any of the subgroups listed in § 200.16(a)(2) as an additional subgroup.

Discussion: We appreciate the support from commenters highlighting the importance of accountability for individual subgroups of students, but note that the proposed regulations did not prohibit combined subgroups entirely; rather, they require the use of specified individual subgroups of students for certain purposes in statewide accountability systems and permit the use of additional subgroups of students in its statewide accountability system, which may include combined subgroups of students. Consistent with section 1111(c)(2) of the ESEA, the regulations require that a State include certain subgroups of students, separately, when establishing long-term goals and measurements of interim progress under § 200.13, measuring the performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19. These subgroups of students include economically disadvantaged students, students from each major racial and ethnic group, children with disabilities, as defined in section 8101(4) of the ESEA, and English learners, as defined in section 8101(20) of the ESEA. However, the statute does not prohibit a State from using additional subgroups in its statewide accountability system, which may include combined subgroups. We also believe it is appropriate for States to retain flexibility to include various additional subgroups, based on their contexts, so long as each required individual subgroup is also considered. Accordingly, we are not revising the regulations.

Changes: None.

Comments: A number of commenters supported the requirement that a combined subgroup cannot be used in place of considering each of the required individual subgroups. A few commenters focused on the importance of maintaining the individual subgroups included in the proposed regulations. Some commenters noted that the use of so-called ''super subgroups'' in school ratings can mask underperformance of some individual subgroups of students, making it more difficult to identify schools with one or more consistently underperforming subgroups of students for targeted support and improvement, making it more challenging to provide specialized supports to support improvement, and limiting information available to the public and parents. Other commenters stated that combining subgroups of students without considering individual subgroups of students is contrary to the statutory purpose of increasing transparency, improving academic achievement, and holding schools accountable for the success of each subgroup. One commenter noted that there are different funding streams for particular subgroups of students, and that retaining individual definitions of these subgroups helps to ensure accountability for use of these funds.

Some commenters highlighted that a combined subgroup can be important as an additional subgroup, as it may allow a State to include students in the statewide accountability system that would not otherwise be included. One commenter provided a State-level example to highlight how many more students are identified in a State accountability system when a combined subgroup is used in addition to individual subgroups.

A few commenters supported the use of combined subgroups for accountability and believe a State should be able to use them in place of each of the required subgroups. Other commenters suggested that holding schools accountable for individual subgroups of students could raise questions regarding the validity and reliability of statewide accountability systems. Some commenters suggested that combined subgroups should be permitted for accountability, but that individual subgroups should be maintained for reporting.

Discussion: We appreciate the wide range of views from commenters both in support of and in opposition to the requirement that each individual subgroup described in § 200.16(a)(2) must be considered in a State's accountability system, and that such subgroups cannot be replaced by a combined subgroup. We believe that the final regulations strike the appropriate balance between ensuring accountability for individual subgroups of students specified in the ESEA, as amended by the ESSA, while also providing flexibility for States to include additional subgroups, including combined subgroups, in their statewide accountability systems.

Changes: None.

Comments: One commenter opposed the requirement that all indicators in a statewide accountability system measure the performance of each subgroup of students that meets the minimum n-size because it would increase the likelihood of diverse schools missing goals or receiving lower school ratings.

Discussion: We acknowledge the commenter's concern, but believe that the ESEA, as amended by the ESSA, requires the consideration of individual subgroups for accountability purposes. Annual meaningful differentiation of school performance is addressed in greater detail in response to comments on § 200.18.

Changes: None.

Comments: One commenter suggested that the Department consider allowing the use of the combined subgroup approach for the English learners, children with disabilities, and economically disadvantaged subgroups of students, provided that each State that combines these subgroups of students reports data on each subgroup individually as well as each of the ways that these three groups of students may be combined.

Discussion: We believe that the ESEA, as amended by the ESSA, requires the consideration of these individual subgroups of students for accountability purposes, and not, as recommended by the commenter, just for reporting purposes.

Changes: None.

Comments: One commenter requested that the proposed regulations be clarified to reflect that each subgroup of students should not include any duplicated students. Another commenter suggested that the use of combined subgroups of students in place of individual subgroups of students would help address what the commenter described as the problem of including students in multiple subgroups (*e.g.,* an economically disadvantaged student who is also a child with a disability).

Discussion: We appreciate that under both the ESEA, as amended by the ESSA, and the proposed regulations some students may be identified in more than one subgroup of students, but we believe this duplication is essential to ensure that statewide accountability systems account for and help address what often are the multiple needs of individual students for different types of academic and non-academic support. Reducing such duplication through the use of a combined subgroup could mask underperformance by individual subgroups of students and thus inhibit the provision of needed services and supports for such students.

Changes: None.

Racial and Ethnic Subgroups

Comments: One commenter supported the requirement that a State consider each major racial and ethnic subgroup separately in its statewide accountability system. A few commenters, however, objected to the proposed requirement that students from each major racial and ethnic subgroup must be considered separately for the purposes of statewide accountability systems as an overreach of the Department's authority. These commenters asserted that the absence of the word ''each'' in the reference to students from major racial and ethnic groups in section 1111(c)(2)(B) of the ESEA, as amended by the ESSA, should be interpreted as providing flexibility for States to use a combined subgroup of students that includes students from all racial and ethnic groups. The commenters explained that the performance of students in individual racial and ethnic subgroups can still be reported for transparency.

Discussion: We agree with the commenter who expressed support for the regulations requiring a State to consider each major racial and ethnic subgroup separately for the purposes of its statewide accountability system. We believe that this regulation reflects the best reading of the statute, and do not agree with those commenters who assert that the absence of the word ''each'' from section 1111(c)(2)(B) of the ESEA, as amended by the ESSA, indicates that Congress intended for students from all major racial and ethnic groups to be combined into one subgroup. Such a subgroup would be virtually, if not completely, duplicative of all students, which could not have been Congress' intent. Rather, we believe Congress' reference to ''major racial and ethnic groups'' was intended to refer to the fact that States have authority to determine what the major racial and ethnic groups in their State are for purposes of compliance with this requirement. As such, there is not one list of major racial and ethnic groups that Congress could have included within section 1111(c)(2)

of the ESEA, as amended by the ESSA. Accordingly, we believe the regulatory clarification that ''each'' major racial and ethnic subgroup must be included is necessary to reasonably ensure compliance with this provision of the statute, and to ensure that States incorporate differentiated information for historically underserved subgroups of students into their accountability systems, thereby promoting educational equity. We note, further, that this interpretation of the statute is consistent with the interpretation of identical language used in prior authorizations of the ESEA.

Changes: None.

Comments: One commenter suggested that the Department require every student to be included as a member of one major racial and ethnic subgroup. The commenter indicated concern that when a student is included as a member of the ''two or more races'' subgroup of students the student may not be identified as a member of any one specific racial and ethnic subgroup should the ''two or more races'' subgroup of students not be identified by the State, which could result in the State not collecting data on all students. The commenter expressed that requiring each student to be a part of one racial and ethnic subgroup will help to ensure that subgroups of students meet the minimum n-size and can be included in a State accountability system.

Discussion: We appreciate the commenter's desire to ensure that subgroups of students accurately reflect the population of the school. Section 1111(c)(2)(B) requires a State to identify, for the purposes of including required subgroups of students in its statewide accountability system, ''students from major racial and ethnic groups.'' This requirement places responsibility on each State to identify which racial and ethnic groups are ''major'' within the State. Therefore, we decline to define in the final regulations which subgroups of students must be included in a State's major racial and ethnic subgroups, as that is a State-specific determination. For the purposes of Federal data collection, the Department published final guidance in 2007 that allows individuals to select more than one race and/or ethnicity and expanded the reporting categories to include ''two or more races.'' Accordingly, a State may choose to include two or more races as a subgroup of students for accountability purposes, if the State considers that subgroup of students to be a major one within the State. We appreciate the commenter's concern that there may be small numbers of students in certain subgroups of students, and therefore, that students in those smaller subgroups of students may not be identified in a State's statewide accountability system, and address that issue in response to comments on § 200.17 (disaggregation of data).

Changes: None.

New Subgroups

Comments: A number of commenters requested that States be required to include additional subgroups beyond those listed in proposed § 200.16, including, for example, Native American students who attend Native American Language Schools and Programs, juvenile justice-involved youth, LGBT students, students who did not attend preschool, homeless students, transient students, and migratory students.

Discussion: The individual subgroups of students currently required in statewide accountability systems by the regulations are consistent with those required by the ESEA, as amended by the ESSA. While we understand that creating additional subgroups of students may help focus needed attention of underserved students with unique academic and non-academic needs, we believe States should have discretion over the inclusion of any additional subgroups in their statewide accountability systems. Consequently, we decline to provide further regulation in this area.

Changes: None.

Comments: One commenter noted that proposed § 200.16(b)(2) included a reference to students with a disability who are covered under Section 504 of the Rehabilitation Act (Section 504) when discussing students who are English learners with a disability and raised questions regarding the inclusion of students receiving services under Acts other than the IDEA. The commenter noted that nowhere else in the proposed changes, nor historically in ED*Facts* data collections, have students served under Section 504 been included with the subgroup of children with disabilities, as ED*Facts* collects information only on students identified as children with disabilities under the IDEA. The commenter questioned whether States should expect that students with disabilities covered under Section 504 will be included in the children with disabilities subgroup for the purposes of reporting, and asked for additional clarification about whether the Department intends to require separate reporting for students with disabilities covered under Section 504.

Discussion: We appreciate the request for clarification about this provision of the proposed regulations, which applies only to the English learner subgroup of students with regard to using the State's ELP assessment within the Progress in Achieving English Language Proficiency indicator. Under the section 1111(b)(2) of the ESEA, as amended by the ESSA, assessment accommodations for all students, including English learners, extend to students with disabilities covered under the IDEA, Section 504, and students with a disability who are provided accommodations under other Acts (*i.e.,* title II of the Americans with Disabilities Act (ADA)). To be more consistent with these statutory requirements, we are revising the final regulations on English learners with a disability to include English learners that receive services under title II of the ADA. It is possible that English learners with a disability covered under IDEA, Section 504, or title II of the ADA may have a disability for which there are no available and appropriate accommodations for one or more domains of the State's ELP assessment because the student has a disability that is directly related to that particular domain (*e.g.,* a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment, even with accommodations)—the students described in proposed § 200.16(b)(2). Under the final regulations, we are clarifying that this determination can be made, on an individualized basis, by the student's IEP team, the student's 504 team, or for students covered under title II of the ADA, by the individual or team designated by the LEA to make those decisions; for such an English learner, the State must include the student's performance on the ELP assessment based on the remaining domains in which it is possible to assess the student. Whether the student receives services under the IDEA or is not eligible for services under the IDEA, but receives services under Section 504 or title II of the ADA, this student's score would count for the purpose of measuring performance against the Progress in Achieving English Language Proficiency indicator.

These regulations do not create an additional subgroup for accountability or for reporting purposes on the performance of students with disabilities who receive services under Section 504 or title II of the ADA who are also English learners. Additionally, we note that under section 3121(a)(2) of the ESEA, as amended by the ESSA, an LEA must provide disaggregated data when reporting the number and percentage of English learners making progress toward ELP for English learners

with disabilities. The term ''English learner with a disability'' is defined in the ESEA to mean an English learner who is also a child with a disability as defined under section 602 of the IDEA. Rather than modifying the students included in the children with disabilities subgroup, the Department intended for these provisions to emphasize the importance of ensuring that there are available and appropriate accommodations for English learners who are also students with disabilities and who receive services under the IDEA, Section 504, or title II of the ADA.

Changes: We have revised § 200.16(c)(2) to clarify that the accommodations for English learners with a disability are determined on an individualized basis by the student's IEP team, 504 team, or individual or team designated by the LEA to make these decisions under title II of the ADA.

Former Children With Disabilities

Comments: A number of commenters replied to the Department's directed question asking whether the provision to allow a State to include the scores of students who were previously identified as children with disabilities under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services (''former children with disabilities''), in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and if so, whether such students may be included in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time.

A few commenters indicated that a State should have the flexibility to include the scores of former children with disabilities for the purpose of calculating the Academic Achievement indicator for up to four years, consistent with the statutory approach for former English learners. One commenter indicated that this approach would recognize that the student population changes over time and allow schools to be rewarded for the progress they have made in supporting former children with disabilities even after they exit from special education services. Another commenter asserted that the proposed flexibility would be important as students are still often receiving specialized supports when they have recently exited from special education services. A few commenters endorsed this approach so that students in the children with disabilities subgroup would be treated the same way as students formerly in the English learner subgroup. Another commenter believed that the flexibility should be more expansive so that a State could include the scores of former children with disabilities for as long as the State determines to be appropriate. The commenter cited the example of a student with a language-based disability who is instructed in a Native American language and may overcome the disability as related to the Native American language, and then encounter the disability again when transferred to a school where the student receives instruction in English.

A number of commenters supported States having the flexibility to include the scores of former children with disabilities in the children with disabilities subgroup for the purpose of calculating the Academic Achievement indicator for up to two years. The commenters contended that this flexibility would provide appropriate incentives to exit students from special education when they no longer require services and receive credit for the progress that schools have made in supporting such students. A few commenters also noted that it would ensure that schools remain accountable for the academic progress of children with disabilities once they exit from special education services. One commenter highlighted that students who transfer from special education back to general education make up about 9.3 percent of students aged 14–21 who exit a State's special education services under IDEA and explained that allowing their scores to be counted in the children with disabilities subgroup for up to two years would allow a State to continue monitoring and better understand special education and general education student performance.

On the other hand, many commenters objected to allowing a State to include the scores of former children with disabilities in the children with disabilities subgroup for purposes of calculating the Academic Achievement indicator. Most of these commenters agreed that the last year a student should count in the subgroup of children with disabilities is the year in which the student exits from receiving special education services. These commenters emphasized the need for accountability systems to accurately reflect students who are currently receiving special education services in the subgroup of children with disabilities. One commenter suggested that this flexibility would confound the baseline data in States, while a few commenters noted that unlike with respect to former English learners, the law does not explicitly provide States with the flexibility to include former children with disabilities in the subgroup of children with disabilities. One commenter asserted that extending flexibility to former children with disabilities would exceed the Department's rulemaking authority because such flexibility is not included in statute. A few other commenters suggested that past reasons for including former children with disabilities in the subgroup of children with disabilities are irrelevant under the ESSA because of changes to the accountability requirements. One commenter indicated that including the achievement of former children with disabilities for purposes of determining the achievement of the subgroup of children with disabilities under the ESSA's accountability structure will result in a system in which former children with disabilities are included for some purposes, but not all—adding confusion to the system and undermining transparency. A few commenters objected to this flexibility, noting that while English learners are expected to gain proficiency and exit English learner status, the goal for children with disabilities is not necessarily to exit special education services. One commenter indicated that there is not sufficient data on how many States, if any, are currently using this option and another suggested it is not the methodology employed within its State.

Finally, one commenter suggested that former children with disabilities who are included in the subgroup of children with disabilities should also be counted in calculations of whether a school's subgroup of children with disabilities exceeds the State's n-size.

Discussion: We appreciate the comments in response to the directed question. We asked this question to determine whether we should maintain the flexibility that exists under § 200.20 of the current regulations. Current § 200.20 provides that in determining AYP for English learners and students with disabilities, a State may include in the English learner and students with disabilities subgroups, respectively, for up to two AYP determinations, scores of students who were previously English learners, but who have exited English learner status, and scores of students who were previously identified as a child with a disability under section 602(3) of the IDEA, but who no longer receive services.

We believe the flexibility to count the scores of former children with disabilities in the subgroup of children with disabilities for up to two years after the student exits services for the limited

purpose of calculating indicators that are based on data from the required State assessments in reading/language arts and mathematics under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA, recognizes the progress that schools and teachers make to exit students from special education and provides an incentive to continue to support such students in the initial years in which the student is transitioning back to general education. We also agree that it is critical to maintain a transparent subgroup of children with disabilities, so that the subgroup data are accurate and schools are appropriately identified for supports. To that end, the final regulations require that a State include such scores only if the scores of all former children with disabilities are included in conformance with a uniform statewide procedure. Allowing a State to select which former children with disabilities to include, for which purposes, or for how long could undermine the fairness of accountability systems across the State by encouraging the inclusion of higher-achieving former children with disabilities only, or encouraging the inclusion of higher-achieving former children with disabilities for longer periods of time than their lower-achieving peers. We note that this regulation is a limited exception as it only allows a State to include these scores for the purposes of calculating indicators that rely on State assessment data in reading/language arts and mathematics and, as noted in proposed § 200.16(d), does not extend such flexibility to other elements of the statewide accountability system or for reporting purposes.

However, we are not persuaded that either available data or current practices related to including former children with disabilities in the subgroup of children with disabilities justify extending this flexibility beyond two years, whether it be up to four years as is the case for former English learners or for a State-determined period of time as recommended by one commenter.

We do not agree that the fact that Congress specifically provided flexibility to include the scores of former English learners in the subgroup of English learners precludes the Department from offering flexibility to include the scores of former children with disabilities in the subgroup of children with disabilities. Nothing in the statute indicates that, by offering flexibility for one subgroup of students, Congress intended to prohibit similar flexibility for other subgroups of students. Providing this flexibility with respect to former children with disabilities constitutes a reasonable exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and does not violate section 1111(e) of the ESEA, as amended by the ESSA (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*), as such flexibility is necessary to reasonably ensure that each statewide accountability system is appropriately designed to improve student academic achievement and school success, in accordance with the requirements in section 1111(c)(4) of the ESEA, as amended by the ESSA.

For all of these reasons, we are revising § 200.16 to retain the flexibility provided in the current regulations for former children with disabilities. We also are revising § 200.16 to require States to count former children with disabilities who are included in the subgroup of children with disabilities for purposes of determining whether a school's subgroup of children with disabilities exceeds the State's n-size for the purposes of calculating any indicator that is based on State assessment data, in accordance with the similar treatment for former English learners.

Changes: We have revised § 200.16 by adding § 200.16(b) to allow a State to include the scores of former children with disabilities for up to two school years following the year in which the student exits from special education services for the purposes of calculating any indicator under § 200.14(b) that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA, including that such a student must also count toward whether the school meets the State's minimum number of students for the children with disabilities subgroup for measuring any such indicator, and that the State must develop a uniform statewide procedure for doing so that includes all such students for the same State-determined period of time. We also made conforming edits to the remaining paragraphs in § 200.16 and reorganized and renumbered them, including by adding a paragraph on limitations in § 200.16(d) to clarify the purposes for which both former English learners and children with disabilities may be included, consistent with revisions to § 200.34 on calculating four-year adjusted cohort graduation rates.

Comments: One commenter suggested that the flexibility to include former children with disabilities should extend to the Graduation Rate indicator, as well as the Academic Achievement indicator, believing that including the scores of exited students in both indicators will provide a better snapshot of school performance over time. Another commenter suggested that the flexibility to include former children with disabilities in the children with disabilities subgroup should extend across all indicators and to identification of schools for targeted support and improvement.

Discussion: We believe that revisions to § 200.34 of the final regulations addresses the commenter's concern with regard to graduation rates, because those revisions require a child with a disability to be included in the adjusted cohort graduation rate for the children with disabilities subgroup if the student was identified as part of the subgroup at any time during high school. In practice, this means that if a student exited from receiving special education services in grade 9 and graduated in four years, the student will count as a graduate for the subgroup of children with disabilities, even though the student did not receive services under IDEA for the student's final three years of high school. Further, a State may include the results of former children with disabilities in other indicators, such as Academic Progress, if the measure is based on data from the required State assessments in reading/language arts or mathematics (*e.g.,* student growth or gap closure on these assessments). However, we do not believe further flexibility is warranted with regard to other indicators used for differentiation and identification of schools that do not utilize data from State assessments, as States already have significant discretion in selecting measures for other indicators that take into account school climate, student engagement, or other factors that are less directly related to academic achievement.

Changes: We have revised § 200.16(d) to clarify the purposes for which both former English learners and children with disabilities may be included within the applicable subgroups, consistent with revisions to § 200.34 on calculating adjusted cohort graduation rates.

Comments: One commenter suggested that the ability to include the scores of former children with disabilities should not apply to students whose parents revoke consent to the continued provision of special education services.

Discussion: We believe it would create undue confusion to create an exception for parents who revoke consent to the general rule about including the scores of former children with disabilities, especially as this provision is already limited in scope to the calculation of indicators that are

based on data from State assessments required under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA.

Changes: None.

Former English Learners

Comments: A number of commenters requested that a State be permitted to include former English learners for calculating indicators in addition to the Academic Achievement indicator. One of those commenters requested that former English learners also be included for reporting purposes.

Discussion: Section 1111(b)(3)(B) of the ESEA, as amended by the ESSA, permits inclusion of former English learners' results on the reading/language arts and mathematics assessments for up to four years for purposes of English learner subgroup accountability. These assessment results are included in the Academic Achievement indicator, as recognized in the proposed regulations, but we agree with commenters, in part, that there may be cases where other indicators should include former English learners because the indicator is also based on data from the required State assessments in reading/language arts or mathematics (*e.g.,* a State that measures growth in reading/language arts and mathematics in grades 3–8 in its Academic Progress indicator). Further, we believe this interpretation is more consistent with the statutory provision in section 1111(b)(3)(B) of the ESEA. Thus, we are revising the final regulations to clarify that, if a State chooses to include former English learners for accountability purposes, such students may be included in any indicator under the ESEA that uses results from the State's reading/language arts and mathematics assessments. In any case where required State assessments in reading/language arts and mathematics are not included in an accountability indicator, former English learners may not be included, as expanding this flexibility to indicators that are not based on such State assessments or reporting would potentially limit subgroup accountability for current English learners in contravention of the statute. However, consistent with revisions to § 200.34, an English learner may be included for purposes of calculating the adjusted cohort graduation rate for the subgroup if the student was identified as part of the subgroup at any time during high school. In practice, if a student met the State's exit criteria for English learners in grade 11 and graduated in four years, the student could be counted as a graduate in the four-year adjusted cohort graduation rate for the English learner subgroup, even though the student did not receive language instruction services for the final year of high school. We believe that this additional flexibility partially addresses the commenters' concern with regard to the Graduation Rate indicator, but we do not believe further flexibility is warranted with regard to other indicators, as States already have significant discretion in selecting measures for other indicators that take into account student progress, school climate, student engagement, or other factors that are less directly related to academic achievement.

Changes: We renumbered and revised § 200.16(d) to clarify the purposes for which both former English learners and children with disabilities may be included within the respective subgroups, consistent with revisions to § 200.34 on calculating adjusted cohort graduation rates.

Comments: A number of commenters expressed their support for proposed § 200.16(b)(1), permitting a State to include in the Academic Achievement indicator, for up to four years, a student who has exited English learner status. One such commenter, however, noted concern that allowing former English learners to be included may mask the performance of the English learner subgroup.

Discussion: We appreciate the support for proposed § 200.16(b), as well as the concern about masking of subgroup performance. Section 1111(b)(3)(B) of the ESEA, as amended by the ESSA, gives States the discretion to include the scores of former English learners on the reading/language arts and mathematics assessments for up to four years for purposes of English learner subgroup accountability; States are not required to do so. In addition, we believe that the masking concern is mitigated by § 200.16(d), which excludes former English learners from the English learner subgroup for reporting purposes (except those directly related to reporting on the indicators where such students may be included), thus ensuring that parents and other stakeholders receive information about the performance of current English learners through the reporting requirement. Further, we note that the inclusion of former English learners, if a State chooses to do so, may increase the likelihood that schools are held accountable for the English learner subgroup, as such students must be counted toward meeting the State's minimum number of students for indicators that are based on data from State assessments in reading/language arts and mathematics. To that end, we are clarifying § 200.16(c)(1)(ii) to specify that this provision on counting former English learners towards meeting the State's minimum number of students only applies for such indicators.

Changes: We have revised the regulations in § 200.16(c)(1)(ii) to specify that former English learners are included for purposes of calculating whether a school meets the State's minimum number of students under § 200.17(a) for the English learner subgroup on any indicator under § 200.14(b) that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the ESEA, as amended by the ESSA.

Comments: One commenter asked that the Department clarify that an English learner whose parents refuse services should not be considered a former English learner for purposes of proposed § 200.16(b)(1). In addition, commenters requested clarification that an English learner who exits status during the school year would be considered an English learner—not a former English learner—in that school year.

Discussion: We agree that only students who have exited English learner status can be considered as students who have ceased to be identified as English learners; English learners whose parents have opted the student out of services are still English learners until they meet the State's exit criteria. We also agree that students who do meet the exit criteria during the school year should count as an English learner for that school year. We are therefore clarifying, in § 200.16(c), that the regulation applies only to students who have met the State's exit criteria, beginning with the year after they meet those criteria.

Changes: We have modified § 200.16(c) to clarify how to calculate the four years after a student ceases to be identified as an English learner (*i.e.,* the four years following the year in which the student meets the statewide exit criteria, consistent with § 299.19(b)(4)).

English Learners With a Disability

Comments: A few commenters provided suggestions related to English learner students who are unable to be assessed in all four domains of language on the ELP assessment, as related to the requirement that such a student's performance be included in the Progress in Achieving English Language Proficiency indicator. Most commenters indicated support for proposed § 200.16(b)(2), which requires that if an English learner's IEP team or 504 team determines that the student is unable to

be assessed in all four domains of language, the State must include the student's performance on the ELP assessment based on the remaining domains in which it is possible to assess the student. One commenter expressed hope that this exception would truly be an exception, and not apply to most English learners with disabilities. Another commenter supported the rule but suggested the addition of language indicating that the composite score for any student not assessed in the four domains of language must be valid and reliable. Additionally, a commenter suggested that the Department add language to the proposed regulations to allow accommodations for students with disabilities who have limited or no oral speech to take the speaking components of State assessments generally in ways that measure communication skills rather than only oral speech. The commenter provided specific examples of such accommodations, including using text-to-speech, sign language, and/or augmentative and assistive communication devices.

One commenter disagreed with the proposed regulation, stating that an English learner who has a disability that prevents the student from being assessed in one or more domains of language on the ELP assessment should be excluded from all calculations.

Discussion: We appreciate the support we received on this provision, as well as the nuanced issues raised by some of the commenters. We agree with the commenter indicating that this rule should be an exception and only serve the small fraction of English learners with disabilities who, because of an identified disability, cannot be assessed in one of the four domains of language. For these reasons, we are clarifying the final regulations to specify that this exception applies only in the case of an English learner with a disability that precludes assessment in one or more domains of the ELP assessment such that there are no appropriate accommodations for the affected domain(s), as determined on an individualized basis by the student's IEP team, 504 team, or individual or team designated by the LEA to make these decisions under Title II of the ADA. We disagree with the commenter who asserted that such students' scores should be completely excluded from accountability systems; the exclusion of student scores is not only contrary to the statute but can result in a lack of proper attention and services for such students.

We appreciate the concerns of the commenter who requested that we add examples of particular accommodations and discuss issues of validity and reliability with regard to composite scores that do not include performance in all four domains. While we believe this information is critical to the field, we believe that the recommended clarifications would be best addressed through non-regulatory guidance. Further, we note that specific issues regarding the statewide ELP assessment, including validity, reliability, and accommodations, are outside the scope of these regulations, as they pertain to regulations on State assessments under part A of title I.

Changes: We have revised § 200.16(c)(2) to clarify that—in the case of an English learner with a disability that precludes assessment in one or more domains of the ELP assessment such that there are no appropriate accommodations for the affected domains, as determined on an individualized basis by the student's IEP team, 504 team, or individual or team designated by the LEA to make these decisions under Title II of the ADA—States must, for purposes of measuring performance against the Progress in Achieving English Language Proficiency indicator, include such a student's performance on the ELP assessment based on the remaining domains in which it is possible to assess the student.

Recently Arrived English Learners

Comments: A number of commenters expressed support for proposed § 200.16(b)(3)–(4) with respect to including the results from recently-arrived English learners in accountability determinations. Of those, two commenters suggested extending the flexibility for inclusion of such results to three to five years.

Discussion: We appreciate the support for the regulations on recently arrived English learners. The timeframes in proposed § 200.16(b)(3) are the same as the requirements in section 1111(b)(3)(A) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: Several commenters expressed concern that the requirement in proposed § 200.16(b)(3)(ii)(C), regarding growth on content assessments, effectively requires any State that decides to avail itself of that option for including recently arrived English learners in accountability to use a growth measure in its Academic Progress indicator.

Discussion: The requirements in section 1111(b)(3)(A) of the ESEA, as amended by the ESSA, permit the use of growth on content assessments in lieu of proficiency for accountability purposes in limited instances for recently arrived English learners. The commenters are correct that, under the second statutory option (section 1111(b)(3)(A)(ii)(II)(bb), and reflected in proposed § 200.16(b)(3)(ii)), in which recently arrived English learners are assessed in their first year on the reading/language arts as well as the math assessments, States are required to include a measure of student growth in the accountability system. Under the proposed regulations, a State would have been required to include the performance of such recently arrived English learners in their second year of enrollment in U.S. schools on those content assessments in a growth measure in the Academic Achievement indicator for high schools, and in the Academic Progress indicator for non-high schools. We recognize that not all States may decide to use a measure of growth in the Academic Progress indicator, and are revising § 200.16(c)(3)(ii)(C) to clarify that a State may include a measure of growth in the second year of enrollment for such an English learner in either the Academic Achievement or Academic Progress indicator to provide greater flexibility to States with regard to including growth for recently arrived English learners in elementary and middle schools.

Changes: We have revised § 200.16(c)(3)(ii)(C) to allow growth for recently arrived English learners in their second year of enrollment in elementary and middle schools to be included in either the Academic Progress indicator or the Academic Achievement indicator.

Comments: None.

Discussion: In reviewing the proposed regulations, we believe it is necessary to clarify the uniform statewide procedure for determining which assessment and accountability exception, if any, applies to an individual recently arrived English learner, for States that choose not to apply the same exception to all recently arrived English learners in the State. The proposed regulations specified that the statewide procedure must take into consideration a student's ELP level, consistent with the requirements for setting long-term goals and measurements of interim progress for English learners in § 200.13, but did not similarly specify the point in time in which a recently arrived English learner's ELP level should be examined. As the intent was to consider such a student's initial level of ELP—and make a decision about which exception would apply for each of the following two to three years—we are revising the regulations accordingly. This approach is necessary, as a State must determine

which exception is appropriate during the student's first year of enrollment in the U.S. schools in order to comply with the requirements of that exception in each succeeding year.

Changes: We have revised § 200.16(c)(4)(i)(B) to clarify that, for States that choose to use a uniform statewide procedure, a recently arrived English learner's ELP level at the time of the student's identification as an English learner must be taken into account in determining whether the exception applies.

Section 200.17 Disaggregation of Data

N-Sizes for Accountability and Reporting

Comments: We received a number of comments regarding a State's determination of the minimum number of students sufficient to yield statistical and reliable information and protect student privacy, commonly known as the ''minimum n-size.'' A number of commenters supported the proposed requirements in § 200.17(a) for information that States must submit in their State plans related to n-size, including that States submit a justification and receive approval from the Department in order to use an n-size that exceeds 30 students for accountability purposes. Multiple commenters stated that the proposal preserves State flexibility and balances the need for n-sizes to be small enough to be inclusive of all required student subgroups in the statute, but also large enough to ensure statistical reliability and to protect students' privacy. In particular, some commenters noted that requiring States to justify n-sizes above 30 will help ensure that historically disadvantaged student subgroups are not overlooked nor absent from the accountability system.

Discussion: We appreciate the support of these commenters, and agree that the requirements in § 200.17(a) are necessary and appropriate to ensure that States establish n-sizes that not only help produce valid and reliable accountability determinations, but also ensure all students and subgroups of students are meaningfully included in annual meaningful differentiation and identification of schools and in annual report cards. These provisions provide sufficient flexibility for States to determine their own n-sizes for accountability and reporting while protecting equity and the focus on educational opportunity and excellence for all students.

Changes: None.

Comments: A number of commenters disagreed with the proposed requirement for a justification to exceed a minimum n-size of 30 students and recommended eliminating this requirement in the final regulation. These commenters recommended that instead States be allowed to select, in consultation with stakeholders, an n-size they believe is appropriate without any further parameters, or that the Department move these provisions to non-regulatory guidance. Some of these commenters also objected that a requirement for States to justify their n-size exceeds the Department's statutory authority or violates the prohibition in section 1111(e)(1)(B)(iii)(VIII) of the ESEA, as amended by the ESSA, related to prescribing the minimum number of students a State uses for purposes of accountability and reporting.

Discussion: As discussed previously, we appreciate the support of many commenters for the requirement that States submit a justification for a minimum n-size exceeding 30 students for review and approval by the Department as part of the State plan process. We agree that this approach strikes the right balance toward ensuring each State's n-size meets all statutory requirements. We also believe this requirement is consistent with both the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA (as previously described in the discussion of Cross-Cutting Issues), and the specific provisions of the ESEA, as amended by the ESSA, and that it does not violate section 1111(e) of the ESEA, as amended by the ESSA. More specifically, the requirement in § 200.17(a)(2)(iii) and (3)(v) is not inconsistent with section 1111(e)(1)(B)(iii)(VIII) of the ESEA, as amended by the ESSA, because it does not prescribe a specific minimum n-size. Rather, the regulations establish a baseline expectation that a State will select an n-size of 30 or less, or otherwise submit a justification for a higher number. A State that selects an n-size that is lower than 30 has significant discretion to select any n-size below 30, so long as it meets the requirements of section 1111(c)(3) of the ESEA and § 200.17(a)(1)–(2). Further, a State retains the flexibility to establish an n-size that is higher than 30, provided it demonstrates how the higher number promotes sound, reliable accountability decisions consistent with the statutory requirements for n-size and the law's focus on accountability for subgroup performance at the school level. The requirements in §§ 200.17(a)(2)(iii) and (3)(v) fall squarely within the scope of the title I, part A of the statute and are necessary to reasonably ensure that States are able to meet the requirements of section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, which requires a State to establish a system of meaningful differentiation that includes differentiation of any school in which any subgroup of students is consistently underperforming, while also meeting the requirements of section 1111(c)(3) of the ESEA.

The State-determined n-size must meet several requirements in the statute, including to support valid and reliable accountability determinations and data reporting; to protect student privacy; and to support the inclusion of each subgroup of students for purposes of measuring student progress against the State's long-term goals and indicators, annually meaningfully differentiating schools based on those indicators, identifying schools with low-performing and consistently underperforming subgroups, and providing support for improvement in those schools. We agree with commenters that stakeholder engagement is critically important in selecting an n-size that works in the context of each State; in fact, under the statute and §§ 299.13 and 299.15, States are required to conduct meaningful and timely stakeholder engagement to establish their accountability systems, including their n-size. That said, we disagree that additional parameters for a State to consider in setting its n-size are unnecessary or best discussed in non-regulatory guidance only. Setting an n-size that is statistically sound *and* inclusive of subgroups has been a challenge for States, and past approaches have, at times, prioritized setting a conservative n-size (*e.g.,* 100 students) at the expense of providing meaningful subgroup accountability. Current regulations in § 200.7, which were updated in 2008, include many similar parameters as those in proposed § 200.17(a). These regulations were promulgated to provide greater transparency to the public in how n-sizes are established and establish a reasonable approach for States to balance statistical reliability and privacy with the statutory emphasis on disaggregation and subgroup accountability, consistent with the NCLB's purpose to close achievement gaps.[6] These reasons remain applicable under the ESEA, as amended by the ESSA, given that section 1111(c)(3) requires all States to select an n-size that is statistically sound and protects

[6] See: 73 FR 64335, 64441–64442 (October 29, 2008).

student privacy for all purposes under title I, including subgroup accountability and reporting. Further, since the 2008 regulations took effect, numerous States have lowered their n-sizes, including sixteen in the last two years.[7] We strongly believe that creating a process in the State plan for stakeholders to meaningfully engage in establishing a State's n-size, including by requiring a State selecting an n-size larger than 30 students to provide transparent data and clear information on the rationale and impact of its selected n-size, is essential to maintain this progress in using lower n-sizes and to support a better, and more appropriate balance between validity, reliability, student privacy, and maximum inclusion of subgroups of students.

Changes: None.

Comments: Many commenters supported proposed § 200.17(a), under which a State must justify in its State plan setting any minimum n-size above 30 students, but recommended that the threshold above which a justification for the State's proposed n-size is required be lower than 30 students. The majority of those commenters recommended that any proposed n-size above 10 students for accountability and reporting purposes (as the proposed regulations would permit a State to select a lower n-size for reporting) require a justification in the State plan; a few commenters recommended that the Department require a justification for any proposed n-size above 20. Some commenters who supported a lower number were concerned that a threshold of 30 students would provide an incentive for States that are currently using a lower n-size to raise their n-size to 30.

In support of their suggestion that we lower to 10 the threshold above which a State must provide further justification for its proposed n-size, some commenters cited research, including a 2016 Alliance for Excellent Education [8] report and a 2010 IES report [9] concluding that data based on n-sizes of 5 or 10 students may be reported reliably without revealing personally identifying information. To show how a lower number would increase subgroup accountability, some commenters provided evidence from select States on the number and percentage of students that were ''added'' to the accountability system or the number and percentage of schools that were newly held accountable for subgroup performance when that State lowered its n-size. Other commenters cited a general concern about including particular subgroups, such as children with disabilities, English learners, or Native American students, in the accountability system or ensuring particular schools, like rural schools, were held accountable for subgroup performance. Others who recommended a threshold of 10 pointed to the Department's proposed rule, Equity in IDEA, which suggested a minimum n-size of not more than 10 as the standard methodology to determine whether there is significant disproportionality in each State and its LEAs, based on race or ethnicity due to overrepresentation in the identification, placement, and discipline of children with disabilities. Another commenter believed that lowering the threshold to 10 would improve the ability to make cross-State comparisons based on educational data.

Finally, a few commenters challenged the research basis for the proposal of 30 as the n-size above which a justification is required—but instead of recommending a lower threshold, the commenters either requested that the final regulations provide States greater flexibility in selecting an n-size, or require States to describe how their n-size minimizes error and provides for adequate validity and reliability of school-level reporting and accountability decisions generally.

Discussion: We appreciate the support of commenters for our approach to State-determined minimum n-sizes, including requiring a justification from States for proposing to use an n-size above a certain threshold, and agree with the goal of maximizing subgroup accountability; we strongly encourage States to use the lowest possible n-size that will produce valid and statistically sound data, protect student privacy, and meaningfully include all subgroups of students—which may well be lower than 30 students in many States. However, we do not believe that the current state of practice or current research on minimum n-sizes supports requiring States to submit a justification of an n-size below 30 students for accountability purposes, although this could change in the future, as additional research is produced and as evidence from State implementation of disaggregated accountability and reporting under the ESEA is gathered. We also disagree with commenters that research suggests 30 is an inappropriate threshold altogether and preferred for States to provide a general description of how their n-size meets the statutory requirements for validity and reliability.

The Department believes that requiring additional information for an n-size above 30 students is warranted, because, based on basic statistics and research analyses, an n-size that exceeds 30 is less likely to meet the requirements in the statute, particularly those requiring States to adopt school accountability systems that reflect the performance of individual subgroups of students, and thus, requires justification as part of the State plan review and approval process. Validity and reliability are not the only statutory and regulatory requirements for a State in selecting its n-size; these criteria must be balanced with the requirement for an n-size that is small enough to provide for the inclusion of each student subgroup in school-level accountability and reporting. Not only is this critical to maintain educational equity and protect historically underserved populations of students, but it is also a clear purpose of accountability systems under section 1111(c) of the ESEA, as amended by the ESSA, as disaggregation is required when measuring student progress against the State's long-term goals and indicators and notifying schools with a consistently underperforming subgroup of students for targeted support and improvement. Thus, it is equally important for States to justify how their n-size preserves accountability for subgroups as it is for States to demonstrate validity and reliability as a result of their chosen n-size. Research demonstrates how n-sizes larger than 30 require further justification to show that subgroups of students will be included. For example, under NCLB, 79 percent of students with disabilities were included in the accountability systems of States with an n-size of 30, but only 32 percent of students with disabilities were included in States with an n-size of 40.[10] Similarly, a more recent analysis

[7] Cardichon, J. (2016). ''Ensuring equity in ESSA: The role of n-size in subgroup accountability.'' Alliance for Excellence in Education. *http://all4ed.org/reports-factsheets/n-size/*.

[8] Cardichon, J. (2016). ''Ensuring equity in ESSA: The role of n-size in subgroup accountability.'' Alliance for Excellence in Education. *http://all4ed.org/reports-factsheets/n-size/*.

[9] U.S. Department of Education. Institute of Education Sciences, National Center for Education Statistics (2010). ''Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting.'' Brief 3, NCES 2011–603. *https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011603*.

[10] Harr-Robins, J., Song, M., Hurlburt, S., Pruce, C., Danielson, L., & Garet, M. (2013). ''The inclusion of students with disabilities in school accountability systems: An update (NCEE 2013–4017).'' Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, pp. 24–26.

of California's CORE school districts,[11] found that only 37 percent of African American students' math scores are reported at the school-level with an n-size of 100 students, but 88 percent of such students were included using an n-size of 20 students. For students with disabilities, the difference was larger: 25 percent of students with disabilities were reported at the school-level under an n-size of 100, while 92 percent were included with an n-size of 20. Other reports have demonstrated that an n-size of 60 can potentially exclude all students with disabilities from a State's accountability system.[12]

In addition, while there are many desirable and stable statistical properties that are attributable to an n-size of 30, because that is the sample size at which a distribution approaches normality (an assumption for strong validity for most statistical tests of inference based on the Central Limit Theorem), the subgroups of students that are included for school accountability and reporting purposes are *not,* technically, a sample. Because a State is required to measure the performance of all students and all students in each subgroup of students in calculating the accountability indicators for a given school, the data used for accountability are representatives of a census, or universe, of the entire school population for any given year on any given measure. While collecting data for an entire population does not mitigate all potential sources of error in the data, it does mitigate one very large one: Sampling error because the data are not representative of the school as a whole.

Accordingly, the Department does not dispute that an n-size lower than 30 students, such as 10 or 20, may also be valid, reliable, and maximally inclusive of subgroups—especially for reporting purposes—which is why we believe further justification in a State selecting such an n-size is unnecessary. In specifying 30 as the threshold, we were not only considering the current state of research, but also current practice; only eight States use an n-size for accountability greater than 30 students,[13] so we believe a threshold of 30 will not add burden to the State plan for most States and recognizes the significant progress many States have made in recent years to lower their n-sizes below 30 students.[14] We also do not believe that establishing a threshold of 30 students will encourage States currently using a lower n-size to move to a higher number; such States have established lower n-sizes in response to their own needs and circumstances, and not because of any current statutory or regulatory provision, and thus would be unlikely to revisit earlier decisions in response to a regulation that would not require such action. In sum, after examining these trends in practice and research, we believe a lower threshold would mostly result in greater burden without the desired outcome of commenters (lower n-sizes), because, based on the current the state of knowledge, many States could likely provide a solid justification for selecting an n-size between 10 and 30 students in their State plans.

We also note that § 200.17(a)(2)(iv) would permit States to use a lower n-size, such as 10, for reporting, while using a different n-size for accountability. Further, § 200.20(a) permits a State to average school-level data across grades or over time for particular accountability purposes, including calculating each indicator, so that a State choosing to take advantage of this flexibility may sum the number of students with valid data in a particular subgroup and increase the likelihood that a school meets the minimum n-size (see final § 200.20(a)(1)(A)). For example, the indicators for a school that served a total of ten English learners for each of the last three years will, if an SEA chooses to combine results over three years, be calculated as a combined average of its data from all grades and years; the LEA would have 30 students in this subgroup.

This decision to maintain a threshold of 30, above which a State must justify its proposed n-size, is independent of the different analysis and proposal accompanying the Equity in IDEA proposed regulations, which was based on the context and experience of the IDEA and not the statewide accountability systems required by the ESEA. Finally, as the ESEA provides States with discretion to develop their own challenging academic standards and aligned assessments, ambitious long-term goals and measurements of interim progress, and unique measures and indicators for differentiation of schools, it is not clear that simply setting a lower n-size would support meaningful cross-State comparisons, since even if there was additional information available at a school-level for particular subgroups, such comparisons would be meaningless across States as the underlying measures are, more often than not, unique to each State.

Changes: None.

Comments: A few commenters recommended that the Department require all States, not only those that propose n-sizes greater than 30 students, to submit data on the number and percentage of schools that would not be held accountable for the performance of particular subgroups of students based on the selected n-size.

Discussion: While the final regulations require States that request to use an n-size greater than 30 students to submit data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup described in § 200.16(a)(2), requiring all States to submit this information would unnecessarily increase burden on States that select an n-size that is likely to meet the law's requirements for a threshold that is valid, reliable, and maximally inclusive of all students and each subgroup of students, as discussed previously. However, in light of these comments on the importance of comparative data on school-level accountability for subgroups, we are revising § 200.17(a)(3)(v), to provide that a State's justification of an n-size above 30 includes both data on the number and percentage of schools in the State that would not be held accountable for the results of subgroups described in § 200.16(a)(2) under its proposed n-size as well as comparative data on the number of schools that would not be held accountable for the performance of those subgroups with an n-size that is 30.

Changes: We have revised § 200.17(a)(3)(v) to clarify that a State's justification for an n-size above 30 students includes data on the number

[11] Hough, H., & Witte, J. (2016). ''Making students visible: Comparing different student subgroup sizes for accountability.'' CORE–PACE Research Partnership, Policy Memo, 16–2.

[12] Simpson, M. A., Gong, B., & Marion, S. (2006). ''Effect of minimum cell sizes and confidence interval sizes for special education subgroups on school-level AYP determinations.'' Council of Chief State School Officers; Synthesis Report 61. National Center on Educational Outcomes, University of Minnesota.

[13] Cardichon, J. (2016). ''Ensuring equity in ESSA: the role of n-size in subgroup accountability.'' Alliance for Excellence in Education. *http://all4ed.org/reports-factsheets/n-size/.*

[14] In the last two years alone, sixteen States and the California CORE districts lowered their n-size for either reporting or accountability purposes: Alaska from 26 to 5; Arizona from 40 to 30; Connecticut from 40 to 20. California's CORE districts from 100 to 20; Florida from 30 to 10; Georgia from 30 to 15; Idaho from 34 to 25; Illinois from 45 to 10; Maine from 20 to 10. Minnesota from 40 to 10 for reporting, and to 20 for accountability; Mississippi from 30 to 10; Nevada from 25 to 10; North Carolina from 40 to 30; Pennsylvania from 30 to 11; Rhode Island from 45 to 20; South Carolina from 40 to 30; and Texas from 50 to 25.

and percentage of schools that would not be held accountable for results from each subgroup based on the State's proposed n-size, compared to data on the number and percentage of schools in the State that would not be held accountable for each subgroup if the State had selected an n-size of 30 students.

Comments: Some commenters recommended that all States be required to submit data on the number and percentage of all students and subgroups described in § 200.16(a)(2) for whose results a school would not be held accountable for each indicator in the State accountability system. In addition, a few of these commenters recommended making this information available on SEA and LEA report cards in addition to the State plan.

Discussion: Proposed § 200.17(a)(3)(iv) requires all States in their State plans to submit information regarding the number and percentage of all students and students in each subgroup of students for whose results a school would not be held accountable in the State accountability system for annual meaningful differentiation under § 200.18. As annual meaningful differentiation of schools is based on all of the State's indicators, we believe that it would be unnecessarily burdensome for all States to provide an indicator-by-indicator analysis on the number and percentage of students in each subgroup that are included in the accountability system, or for States to provide this information in two places, the State plan and their report cards. We encourage States, as part of the process of meaningful and timely consultation in developing new accountability systems as described in §§ 299.13 and 299.15, to conduct any analyses, in consultation with stakeholders and technical experts, that they believe will be useful in setting an n-size that is valid, reliable, consistent with protecting student privacy, and maximally inclusive of all students and each subgroup of students.[15] We also note that States may provide additional analyses or data on their selected n-size in their State plans, or make such additional analyses and data public, if they so choose.

Changes: None.

Comments: A few commenters recommended prohibiting the use of an n-size that exceeds 30 students.

Discussion: We believe that restricting n-sizes above 30 students would be inconsistent with section 1111(e)(1)(B)(iii)(VIII) of the ESEA, which prohibits the Department from prescribing a State's n-size so long as the State-determined number meets all requirements of section 1111(c)(3).

Changes: None.

Comments: A few commenters recommended prohibiting States from using n-sizes over 10 students for reporting purposes or requiring States to use a lower n-size for reporting than for accountability purposes.

Discussion: The Department agrees that States should use an n-size that is no larger than necessary to protect student privacy for reporting purposes, especially given the importance of providing transparent and clear information on State and LEA report cards that includes disaggregated information by each subgroup. However, we decline to establish a specific threshold for reporting purposes, because States have demonstrated a commitment to using a low n-size (*e.g.,* 10 or lower) for reporting purposes without regulations requiring them to do so. In addition, we believe that restricting n-sizes for reporting purposes above 10 students would be inconsistent with section 1111(e)(1)(B)(iii)(VIII) of the ESEA, which prohibits the Department from prescribing a State's n-size so long as the State-determined number meets all requirements of section 1111(c)(3). We also disagree with the recommendation to require a lower n-size for reporting, as this could require States that have set a similarly low n-size (*e.g.,* 10 students) for both purposes to increase their n-size for accountability, and believe the decision to use a lower reporting n-size is best left to States.

Changes: None.

Comments: Some commenters opposed the requirement in proposed § 200.17(a)(2)(ii) that the n-size be the same for all accountability purposes, including for each indicator and for calculating participation rates on assessments, believing that the proposed requirements are overly prescriptive and unnecessary to ensure States comply with the law's requirements for establishing n-sizes. In addition, one commenter disagreed with other provisions in proposed § 200.17(a)(2), including the requirement that the State-determined n-size be the same for all students and for each subgroup of students and the option of using a lower n-size for reporting purposes.

Discussion: We disagree with the commenters that the proposed requirements in § 200.17(a)(2) are unnecessary to ensure that States set valid and reliable n-sizes consistent with the law's requirements. First, the requirement in § 200.17(a)(2)(i) for the n-size established by each State to be the same for all students and for each subgroup of students is statutory (section 1111(c)(3)(A)(i) of the ESEA, as amended by the ESSA) whenever disaggregation is required under part A of title I. Second, we believe it is critical for a State to use the same n-size for all accountability purposes, including for each indicator in the accountability system, as required under § 200.17(a)(2)(ii), in order to ensure fairness and equity in accountability decisions and the maximal inclusion of all students in all indicators (with the exception of the Progress in Achieving English Language Proficiency indicator, which applies only to English learners). For example, allowing a State to set a higher n-size for a School Quality or Student Success indicator would reduce the number of schools held accountable for student performance on these new indicators and undermine a key goal of the ESEA, as amended by the ESSA, that school performance determinations be based on broader multiple measures of student and school performance. Finally, as discussed previously, we believe that allowing a lower n-size for reporting is both reflective of current practice in numerous States, encourages States to consider ways they can report results for as many subgroups as possible, and consistent with the statutory requirements related to minimum n-size.

Changes: None.

Comments: A few commenters objected to the Department's proposal that a State explain how other components of its accountability system interact with the State's n-size to affect the statistical reliability and soundness of the State's accountability system and to ensure the maximum inclusion of all students and each subgroup. They recommended eliminating this requirement because they believe it exceeds the Department's legal authority and unnecessarily increases burden on States.

Discussion: We believe these requirements, which mirror similar requirements in current regulations regarding a State's n-size used for accountability, continue to be reasonably necessary to ensure that this key aspect of a State's accountability system—its selected n-size for accountability purposes—is consistent with one of the stated purposes of title I of the ESEA, as amended by the ESSA: To close educational achievement gaps. This purpose cannot be accomplished without subgroup accountability and, thus, it is necessary that the regulations emphasize how States can consider

[15] See, for example: *https://education.ohio.gov/getattachment/Topics/Every-Student-Succeeds-Act-ESSA/Nsize-Topic-Discussion-Guide.pdf.aspx.*

ways to maximize inclusion of student subgroups comprehensively, looking across the design of their accountability system. For example, averaging school-level data across grades or years for calculating the indicators, as permitted under § 200.20(a), is one tool a State can use to maximize the inclusion of subgroups, as States choosing to use this procedure combine, for any measure in an indicator, the number of students with valid data in the applicable subgroup across a whole school, or the number of students in the subgroup with valid data over up to three years. As a result, a school is much more likely to meet a State's minimum n-size for a particular subgroup because it can sum the amount of available data (across grades and across years) for the subgroup on each indicator as described in § 200.20(a)(1)(A). Further, making this information available in the State plan is necessary to reasonably ensure that the public will be able to consult on the State's n-size (consistent with section 1111(c)(3)(A)(ii) of the ESEA) and better understand how schools are being held accountable for the performance of students, including each subgroup. Accordingly, these requirements fall within the Department's rulemaking authority under GEPA and the DEOA as well as under section 1601(a) of the ESEA, as amended by the ESSA, and, as they are within the scope of section 1111(c) of the ESEA, as amended by the ESSA, they do not violate section 1111(e) of the ESEA, as amended by the ESSA (see further discussion under the heading *Cross-Cutting Issues*). Finally, because of the importance of n-sizes for the validity, reliability, and transparency of statewide accountability systems, the benefits of these requirements outweigh the burden on States of complying with them.

Changes: None.

Comments: Some commenters recommended that LEAs be added to the list of required stakeholders in section 1111(c)(3)(A)(ii) with whom States must collaborate in determining their n-sizes.

Discussion: LEAs are one of the stakeholders States must consult in the overall development of the State plan consistent with §§ 299.13 and 299.15, which includes the State's accountability system and determination of n-size as described in § 299.17.

Changes: None.

Comments: One commenter questioned why the proposed regulations request a justification from States that select an n-size above 30 students in § 200.17, but permit a high school with fewer than 100 students that is identified for comprehensive support and improvement due to low graduation rates to forego implementation of a comprehensive support and improvement plan under § 200.21.

Discussion: The State discretion for small high schools in § 200.21(g) is a statutory requirement in section 1111(d)(1)(C)(ii) of the ESEA, as amended by the ESSA, and is separate and unrelated to the requirements in section 1111(c)(3)(A) of the ESEA for States to establish an n-size for any purpose where disaggregated data are required under part A of title I.

Changes: None.

Comments: One commenter requested that the Department issue non-regulatory guidance in addition to § 200.17 to better support States in reporting information that can be disaggregated for the maximum number of subgroups, particular if a school or LEA does not meet the State's n-size.

Discussion: We appreciate the commenter's suggestion and agree that these best practices would be best discussed in non-regulatory guidance.

Changes: None.

Comments: None.

Discussion: In reviewing the proposed regulations, the Department believes it is necessary to clarify that if a State elects to use a lower n-size for reporting purposes than it does for accountability purposes, it must do so in a way that continues to meet the statutory requirement under section 1111(b)(3)(A)(i) and § 200.17(a)(2)(i) for the State to use the same minimum number of students for all the students group and for each subgroup of students for provisions under title I that require disaggregation. The intent of this flexibility in the proposed regulations was to permit a State, consistent with current practice, to use an n-size for reporting purposes (*e.g.,* 6 students) that the State may feel is too low for accountability purposes but will maximize transparency and the amount of publicly reported data on subgroup performance—not to exempt the State from other critical requirements under proposed § 200.17. Because a consistent n-size for all subgroups is a statutory requirement, we believe it is important to reiterate that it applies to any n-size used for either reporting or accountability under title I of the ESEA.

Changes: We have revised § 200.17(a)(2)(iv) to clarify that a State that elects to use a lower n-size for reporting purposes must continue to meet the requirement to use the same n-size for the all students group and for each subgroup of students for purposes of reporting.

Personally Identifiable Information

Comments: Several commenters pointed out that a minimum n-size lower than 30 students has the ability to adequately protect student privacy, often citing a 2010 Institute of Education Sciences (IES) report [16] concluding that data based on n-sizes of 5 or 10 students may be reported reliably without revealing personally identifying information.

Discussion: While we recognize that suppression of data for small subgroups of students is often necessary to protect the privacy of individuals in those subgroups, we maintain that the specific n-size adopted by States is only one component of a broader methodology for protecting privacy in public reporting. In most cases, suppression of data about small subgroups must be accompanied with the application of additional statistical disclosure limitation methods (*e.g.,* complementary suppression, blurring, top/bottom-coding) to effectively protect student privacy. Selection of a specific n-size (*e.g.,* 5 students versus 10 students) to protect student privacy is secondary to the proper application of these additional methods.

In response to those that believe a lower threshold is appropriate, because such a lower number (*e.g.,* 10 students) is sufficient to protect student privacy, the proposal that States justify and receive approval to use an n-size exceeding 30 students is not driven solely by privacy considerations. Privacy protections must also be considered within the larger context of selecting an n-size that meets the statutory requirements that all disaggregated data used for accountability and reporting purposes be of sufficient size to yield statistically sound information and be small enough to maximally include all students and subgroups of students.

Changes: None.

Comments: Recognizing the complexity of protecting privacy in public reporting, several commenters requested that the Department provide guidance to States and LEAs on this issue.

Discussion: The Department previously released several technical assistance resources on this subject through the Privacy Technical Assistance Center (PTAC, available at *http://ptac.ed.gov*), and offers further

[16] U.S. Department of Education. Institute of Education Sciences, National Center for Education Statistics (2010). ''Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting.'' Brief 3, NCES 2011–603. *https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2011603.*

guidance and targeted technical assistance on disclosure methods through PTAC's Student Privacy Help Desk (*PrivacyTA@ed.gov*). The Department also intends to release additional non-regulatory guidance in the future on this subject to assist educational agencies and institutions with their reporting requirements under the ESEA, as amended by the ESSA.

Changes: None.

Comments: Several commenters questioned the Department's authority to expand privacy protections under this section to anyone other than students, as the Family Educational Rights and Privacy Act only protects personally identifiable information from students' education records and does not extend similar protections to school personnel.

Discussion: The provision in § 200.17(b) merely reiterates section 1111(i) of the ESEA, as amended by the ESSA, which prohibits the reporting of disaggregated information if it would reveal personally identifiable information about teachers, principals, or other school leaders. As § 200.17(b) reiterates this statutory requirement, it is being issued consistent with the Department's rulemaking authority under GEPA and the DEOA and under section 1601(a) of the ESEA, as amended by the ESSA, as the regulation is necessary to reasonably ensure compliance with section 1111(i) of the statute.

Changes: None.

Section 200.18 Annual Meaningful Differentiation of School Performance: Performance Levels, Data Dashboards, Summative Determinations, and Indicator Weighting

Summative Ratings

Comments: Many commenters supported the proposed regulations as consistent with the law's requirement for all States to meaningfully differentiate schools and identify schools for support and improvement, including the lowest-performing five percent of title I schools, using a methodology that is based on all of the indicators and affords certain indicators ''much greater'' weight. These commenters further noted that the statute, in effect, includes three summative rating categories: The two categories of schools that must implement improvement plans (*i.e.,* comprehensive support and improvement and targeted support and improvement schools), and a third category of schools, those not identified for comprehensive or targeted support and improvement.

Some commenters recommended that the Department clarify that a State may use these classifications of schools in the statute (*i.e.,* comprehensive support and improvement, targeted support and improvement, not identified for support and improvement) to meet the proposed requirement in § 200.18 to give all schools a summative rating from among at least three categories. These commenters recommended conforming edits throughout the regulation, including in proposed § 200.19, to refer to a State's summative ''determination'' or ''classification,'' as an alternative to a ''rating.'' Further, they suggested we clarify that a State could use a ''dashboard'' approach to make those determinations, although a State would also be permitted to create a separate and distinct methodology, like a numerical index.

Alternatively, several other commenters stated that the requirement for a summative rating was inconsistent with the statute, an overreach of the Department's authority, and at odds with the law's intent to provide more flexibility and create less burden for States with regard to accountability. Some of these commenters also asserted that the requirement for a summative rating violates section 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, which provides that nothing in the ESEA, as amended by the ESSA, authorizes or permits the Secretary to prescribe the specific methodology used by States to meaningfully differentiate or identify schools under title I, part A.

Discussion: We appreciate commenters' support and agree with those who recommended clarifying that (1) the requirement for each State to provide schools with a summative rating from among at least three rating categories is consistent with the law's requirements for school identification, and (2) a State may satisfy the summative rating requirement by making these statutorily required identification determinations its summative rating for each school, as opposed to developing a separate system of ratings that uses different categories of schools for annual meaningful differentiation. Given that these determinations in the statute are one way a State may meet the requirement to provide information on a school's overall level of performance, we are revising the final regulation to clarify that the system of annual meaningful differentiation must produce a single summative ''determination'' for each school that ''meaningfully differentiates'' between schools. Because the ESEA, as amended by the ESSA, requires identification of three summative categories of schools based on all indicators—comprehensive support and improvement, targeted support and improvement, and schools that are not identified—we are further renumbering and revising § 200.18(a)(4) to note that a State's summative determinations for each school may be those three categories. We believe the final regulation, as with the proposed regulation, promotes State flexibility in designing accountability systems, so that multiple approaches may be used, with different categories, such as A–F grades, numerical scores, accreditation systems, or other school classifications. A State choosing to use one of these approaches would still be required to identify comprehensive support and improvement and targeted support and improvement schools as required under the statute.

Given the clarification in § 200.18(a)(4) that a State may meet this requirement by identifying, at a minimum, the two statutorily required categories of schools along with a third category of schools that are not identified, we believe it is clear that this regulation falls squarely within the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and within the scope of section 1111(c) of the ESEA, as amended by the ESSA, consistent with section 1111(e) of the ESEA, as amended by the ESSA (see further discussion of these authorities in the discussion of *Cross-Cutting Issues*). Moreover, each State retains significant discretion to design its methodology and determine how it will reach a single summative determination for each school. For example, one State could develop a two-dimensional matrix, with schools assigned an overall performance category based on how they fare on each dimension, while another State could design a numerical index that awards points for each indicator, with an overall score driving the summative determination, while yet another State could assign each school a determination based on the number of indicators on which the school performs at a particular level or another set of business rules. A State also has discretion to assign a single grade or number or to develop some other mechanism, including one based on a data ''dashboard,'' for reaching a single summative determination—categories of schools like ''priority'' and ''focus'' schools that States have used under ESEA flexibility, for example, would

also be permitted.[17] Given the broad flexibility available to a State for meeting this requirement, § 200.18(a)(4), as renumbered, is not inconsistent with section 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, because it does not prescribe a particular methodology that a State must use to annually differentiate schools.

Changes: We have renumbered and revised § 200.18(a)(4) to clarify that a State must provide each school, as part of its system of meaningful differentiation, a single summative ''determination,'' which may either be (1) a unique determination, distinct from the categories of schools described in § 200.19, or (2) a determination that includes the two categories of schools that are required to be identified in § 200.19 (*i.e.,* schools identified for comprehensive support and improvement and schools identified for targeted support and improvement) and those that are not identified. We have also made conforming edits throughout § 200.18 and other sections of the final regulations that reference school summative determinations. In addition, we have clarified that the summative determination must ''meaningfully differentiate'' between schools.

Comments: We received a number of comments supporting the requirement in proposed § 200.18(b)(4) for a State's system of annual meaningful differentiation to result in a single rating, from among at least three rating categories, to describe a school's summative performance across indicators because it would increase transparency for parents and stakeholders by communicating complex data and information on school quality, across a number of metrics, through a single overall rating. These commenters generally expressed concerns that other approaches absent a summative rating, such as a data ''dashboard,'' would make it difficult for parents to understand the overall performance of their child's school, particularly to determine how the results from the dashboard led to the school's identification for comprehensive or targeted support and improvement. Other commenters noted that summative ratings are widely used in other sectors precisely because they communicate complex information succinctly and effectively in a manner that empowers stakeholders and guides decision-making; this view is consistent with that of another commenter who cited research that suggests parents prefer summative ratings like A–F grades.[18]

Many commenters noted that a summative rating and detailed indicator-level information in a ''dashboard'' are not mutually exclusive, and voiced support for a summative rating requirement that, as provided for in the proposed regulations, also requires performance on each indicator to be reported, so that parents and the public have information on overall school quality in the summative rating—which would drive identification of schools—alongside more detailed information breaking down performance on each indicator—which would drive continuous improvement. A number of commenters also cited the benefits of summative ratings for school improvement efforts, asserting that such ratings support meaningful differentiation of schools, promote successful interventions by helping direct resources to schools that are most in need of support, and, as suggested by research, motivate and are associated with successful efforts to improve and achieve a higher rating.[19]

However, numerous other commenters suggested removing the requirement for a single rating, because they believe it undermines the value and transparency of an accountability system based on multiple measures—including the addition of new indicators under the ESEA, as amended by the ESSA—by reducing school performance, and any subsequent improvement efforts, to a single label. The commenters asserted parents and educators alike would find data on individual indicators more useful and straightforward than a single rating, particularly when designing improvement strategies targeted to a school's needs. Other commenters suggested that requiring a summative rating for each school would result in one-size-fits-all accountability systems that discourage innovative accountability approaches, such as data ''dashboards,'' and demoralize educators by promoting punitive accountability systems that are focused on ranking schools against each other, which some linked with increased staff turnover. Many of these commenters associated a summative rating with a requirement to assign all schools an A–F letter grade or a single score, and noted their objections to such methodologies. One commenter requested the Department allow States to either award schools with a single, overall summative determination, or multiple determinations (*i.e.,* one for each indicator), believing an approach that allowed for ''determinations'' instead of ratings would provide greater flexibility for States to choose how they communicate areas in need of improvement in a school.

Finally, a number of commenters believed the requirement for a single summative rating would create arbitrary, invalid, and unfair distinctions among schools or objected to such a requirement as inconsistent with research on school performance and improvement.[20]

Discussion: We appreciate the strong support from many commenters for the summative rating requirement we proposed as part of each State's system of annual meaningful differentiation of schools. We also acknowledge the strong objections raised by many other

[17] ESEA Flexibility refers to the set of waivers from certain provisions of the ESEA, as amended by the NCLB, that the Department offered to States from the 2011–2012 through 2015–2016 school years. Given the overdue reauthorization of the ESEA, as amended by the NCLB, President Obama announced in September 2011 that the Department would grant these waivers to qualified States—those adopting college- and career-ready expectations for all students; creating differentiated accountability systems that target the lowest-performing schools, schools with the largest achievement gaps, and other schools that are not meeting targets for at-risk students; and developing and implementing teacher and principal evaluation and support systems that take into account student growth, among multiple measures, and are used to help teachers and principals improve their practices. In total, 43 States, the District of Columbia, and Puerto Rico were awarded ESEA Flexibility. For more information, see: *http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.*

[18] See: *http://mclaughlinonline.com/pols/wp-content/uploads/2014/05/NATL-CSS-X-TABS-PRIMARY-4-18-14.pdf.*

[19] See, for example, Dee, Thomas S., & Jacob, B. (May 2011). ''The impact of No Child Left Behind on student achievement.'' Journal of Policy Analysis and Management, 30(3), 418–446; Carnoy, Martin, & Loeb, S. (2002). ''Does external accountability affect student outcomes? A cross-state analysis.'' Educational Evaluation and Policy Analysis, 24(4), 305–31; Ahn, T., & Vigdor, J.L. (September 2014). ''The impact of No Child Left Behind's accountability sanctions on school performance: Regression discontinuity evidence from North Carolina.'' NBER Working Paper No. w20511; Hanushek, Eric A., & Raymond, M.E. (2005). ''Does school accountability lead to improved student performance?'' Journal of Policy Analysis and Management, 24(2), 297–327; Winters, Marcus A. (2016). ''Grading Schools Promotes Accountability and Improvement: Evidence from New York City, 2013–2015.'' Manhattan Institute; Burgess, Simon, Wilson, D., and Worth J. (2013); and ''A natural experiment in school accountability: The impact of school performance information on pupil progress.'' Journal of Public Economics, 106(C), 57–67.

[20] See, for example, Lipnevich, A.A., and Smith, J.K. (June 2008). ''Response to assessment feedback: The effects of grades, praise, and source of information.'' Princeton, NJ: ETS; National Research Council. *Incentives and Test-Based Accountability in Education.* Washington, DC: The National Academies Press, 2011. doi:10.17226/12521; and the Oklahoma Center for Education Policy and the Center for Educational Research and Evaluation. (January 2013). ''An Examination of the Oklahoma State Department of Education's A–F Report Card.''

commenters. However, we believe some of the concerns expressed by commenters may be rooted in misconceptions about the requirement, as proposed, which we have clarified in these final regulations, as previously described.

We agree that the accountability requirements in the ESEA, as amended by the ESSA, move away from a one-size-fits-all approach by requiring multiple indicators of school success, beyond test scores and graduation rates, to play a factor in accountability decisions. However, we disagree that a summative determination will undermine these positive steps, diminish the ability of States to develop innovative models, and lead to a narrow focus on ranking schools—or on test scores or overall school grades—at the expense of other indicators. Under the regulations, States can design a number of approaches to produce an overall determination, based on all indicators, for each school—including an approach that utilizes data ''dashboards,'' A–F school grades, a two-dimensional matrix based on the accountability indicators, or other creative mechanisms to communicate differences in overall school quality to parents and the public. These approaches must also be developed through meaningful and timely stakeholder engagement, including parents and educators, as described in §§ 299.13 and 299.15.

Moreover, we believe the requirement for a summative determination is most consistent with research on what makes an effective accountability and improvement system. For example, in addition to research cited in the NPRM, additional studies have shown the positive benefits of providing schools with a summative determination on student academic achievement.[21]

We agree with commenters that ensuring transparent, clear information on school quality for parents, educators, and the public is an essential purpose of accountability for schools under the ESEA, an opinion shared by those commenting in support of and opposition to the proposed requirement for summative ratings. Further, we agree that the increased number of required accountability indicators under the ESEA, as amended by the ESSA, provides a valuable opportunity for States to provide a more nuanced picture of school performance that includes both academic and non-academic factors. This is why our regulations would require both a summative determination and information on each indicator, which must be reported separately as described in the statute and in §§ 200.30 through 200.33 and which could be presented as part of a data ''dashboard.'' In this way, parents, educators, and the public have a wealth of school-level information, including information disaggregated by subgroups, at their disposal—information that will be critical in supporting effective school improvement. Given that many commenters did not recognize that a data ''dashboard'' or other mechanism for indicator-level reporting *and* a summative determination were both a part of State systems of annual meaningful differentiation under § 200.18, we are revising the name of the section in the final regulations to provide greater clarity and reflect all of the components that are included. Section 200.18, ''Annual Meaningful Differentiation of School Performance: Performance Levels, Data Dashboards, Summative Determinations, and Indicator Weighting'' reflects our strong belief that requiring States to report information on each school's performance on the indicators separately *and* report a comprehensive determination for each school is both effective and reasonably necessary, consistent with the requirement for robust statewide accountability systems in the ESEA, as amended by the ESSA, to provide useful, comparable, and clear information to parents, teachers, and other stakeholders about how schools are performing. In addition, we are revising § 200.18(a)(4) to emphasize the importance of transparent information by clarifying that the purpose of the summative determination is to provide information on a school's overall performance to parents and the public ''in a clear and understandable manner.''

Changes: We have renamed § 200.18 in the final regulations to clarify and recognize all of the components of annual meaningful differentiation—performance levels, data dashboards, summative determinations, and indicator weighting. We have also clarified § 200.18(a)(4) to require that the summative determination provide information ''in a clear and understandable manner'' on a school's overall performance on annual report cards.

Comments: Several commenters wrote in opposition to the requirement for a single summative rating, believing such a requirement unfairly penalizes schools based on the makeup of students in their communities, due to the correlation between student demographics and student achievement measures, with a few commenters specifically concerned such a rating would fail to address the unique needs and circumstances of rural schools.

Discussion: We disagree that a requirement for a single summative determination, as revised in the final regulation, will unfairly differentiate schools based on the students they serve. We believe such criticisms may be rooted more in concerns with the accountability system required in the past under NCLB, which primarily considered student test scores and graduation rates, and that these concerns are significantly mitigated by changes in the accountability systems that will be implemented under the new law. Under § 200.18, States, in consultation with stakeholders, must develop a multi-indicator system for annually differentiating schools that looks beyond achievement measures to take into account a more well-rounded picture of school success. As a result, schools could be recognized for the significant progress they are making in helping low-achieving students grow academically to meet State standards, improvements in school climate or the percentage of English learners who progress toward language proficiency, and reductions in rates of chronic absence, among many other measures that could be added within one of the new accountability indicators. Because of the new discretion States have to rethink the measures they use to differentiate schools and create systems that represent their local goals and contexts, including the particular needs of rural communities, we are hopeful that States can avoid some of the pitfalls of their prior accountability systems and provide annual school determinations that are clearer and more meaningful to the parents and the public.

Changes: None.

Comments: One commenter believed that a summative rating requirement would inhibit capacity at the local level

[21] See, for example, Winters, Marcus A. (2016). ''Grading Schools Promotes Accountability and Improvement: Evidence from New York City, 2013–2015.'' Manhattan Institute; Rockoff, Jonah and Turner, Lesley J. (2010). ''Short-Run Impacts of Accountability on School Quality.'' American Economic Journal: Economic Policy, 2(4): 119–47; Winters, M.A., and Cowen, J.M. (2012). Grading New York accountability and student proficiency in America's largest school district. Educational Evaluation and Policy Analysis, 34(3), 313–327; Rouse, C.E., Hannaway, J., Goldhaber D., and Figlio D. (2013). ''Feeling the Florida Heat? How Low-Performing Schools Respond to Voucher and Accountability Pressure.'' American Economic Journal: Economic Policy, 5(2): 251–81; Figlio, David N. and Rouse, Cecilia Elena. (2006). ''Do accountability and voucher threats improve low-performing schools?'' Journal of Public Economics, 90(1–2):239–255; and Chiang, Hanley. (2009). ''How accountability pressure on failing schools affects student achievement.'' Journal of Public Economics, 93(9–10):1045–1057.

to conduct the data analysis needed to design effective school improvement strategies that will meet a school's specific needs, and suggested that we add to the regulations an option for States to submit in their State plans an alternative method (instead of a summative rating) for differentiating schools based on their performance, which would require approval from the Secretary based on a number of criteria.

Discussion: Given the revisions described previously to § 200.18(a)(4), we believe it is unnecessary to provide an alternative method for States to differentiate schools—a State may use the required categories for identification enumerated in the statute as its summative determinations, or adopt a host of other approaches to provide an overall picture of each school's performance across all of the indicators. Because this overall determination must also be presented on report cards alongside indicator-specific information (*e.g.,* in a data ''dashboard''), we disagree with the commenter that a summative determination makes it more challenging for LEA and school staff to access and analyze the data necessary to drive effective school interventions. We strongly encourage schools to consider all data from its State accountability system, in addition to local data, in designing school improvement plans, so that the plans reflect, to the fullest extent, the needs and strengths of each identified school. Further, we are regulating on the required needs assessment for schools identified for comprehensive support and improvement under § 200.21 to ensure that the school improvement process is data-driven and informed by each school's context, relevant student demographic and performance data, and the reasons the school was identified, not just an overall determination.

Changes: None.

Comments: Several commenters were concerned that aggregating performance, including performance of student subgroups, across each indicator into a single rating would make information about how well a school was serving its subgroups of students more opaque and less consequential in the overall accountability system.

Discussion: We agree with commenters that a requirement for a summative determination for each school could appear to deemphasize related statutory requirements to hold schools accountable for the performance of an individual subgroup. This concern is mitigated by the fact that summative determinations must reflect the performance of all students and subgroups in the school. Nevertheless, we are revising § 200.18(a)(6), as renumbered, to reinforce the importance of subgroup accountability, while retaining an overall summative determination. Further, we note that information on LEA and State report cards—including the overview section as described in §§ 200.30–200.31—must show student-level data related to each indicator, disaggregated by subgroup, which will help ensure that parents and the public have access to both an overall understanding of school performance, as well as detailed information broken down by subgroup.

Changes: We have renumbered and revised § 200.18(a)(6) to reiterate that the system of annual meaningful differentiation must inform the State's methodology for identifying schools for comprehensive and targeted support and improvement, including differentiation of schools with a consistently underperforming subgroup.

Comments: Two commenters suggested modifying the requirement in proposed § 200.18(b)(4) for each State to provide schools with a single rating, from among at least three rating categories, to require at least five rating categories. With only three categories, they attested, the lowest category would be reserved for schools in the lowest-performing five percent of title I schools, while the highest category would be limited to a handful of top performers—leaving the majority of schools in the middle tier and providing little differentiation.

Discussion: While we appreciate the commenters' concern that three summative categories could result in a system where many schools are grouped into a single category, we also recognize that the requirement for at least three summative categories of schools is most consistent with the statutory requirement to, based on all indicators, identify schools for comprehensive support and improvement, targeted support and improvement, or to not identify schools for either category. Further, we believe that a system with five categories of schools could also result in the majority of schools identified in a single category, depending on the State's methodology. Ultimately, the external peer review of State plans will inform whether a State has established a system for meaningfully differentiating between schools in a manner consistent with the statutory and regulatory requirements. Moreover, we believe a number of methodologies and approaches can meet these requirements, and we want to ensure States have the ability to adopt a range of methods to provide summative determinations. Nothing in the regulations prevents a State from adopting additional categories of schools, particularly if they find that three categories are not providing sufficient differentiation, but we believe States should retain that discretion to go beyond the three required categories, working with stakeholders and other partners to meets their particular needs and goals.

Changes: None.

Comments: A few commenters suggested removing the requirement in proposed § 200.18(b)(4) for each LEA report card to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32, preferring to give States the discretion to report a school's summative rating publicly.

Discussion: We believe the overall performance of a school is among the most critical and essential information to make readily available to parents and the public on LEA report cards, alongside data on individual measures and indicators. In particular, given the role of summative determinations in identification for support and improvement under § 200.19, parents and the public need to know a school's determination in order to better understand why a school was, or was not, identified for intervention.

Changes: None.

Performance Levels on Indicators

Comments: Several commenters supported the requirement in § 200.18 for States to establish and report a performance level (from among at least three levels) for each school, for each indicator, as part of the State's system of annual meaningful differentiation of schools, because such levels would provide necessary and complementary information to a school's summative rating by recognizing areas of strengths and weakness, in addition to overall performance, and would support a more accurate and comprehensive picture of a school's impact on learning in the context of multi-measure accountability systems. As a result, they believe the requirement helps improves trust in, and the transparency of, school determinations among parents and the public and informs more effective improvement strategies targeted to the specific needs of schools and their students.

A number of other commenters, however, objected to the proposed requirements for States to report the level of performance, from among at least three levels, for each indicator on LEA report cards and use the

performance levels as the basis for a school's summative rating. Some of these commenters opposed performance levels as a return to prescriptive and limiting subgroup-based accountability formulas required by the NCLB. Other commenters raised methodological objections to performance levels on indicators, asserting that such an approach is inconsistent with research and does not yield valid or reliable accountability determinations, particularly by setting arbitrary cut points, where there is no meaningful difference between schools just above, and just below, those cut points.

Several commenters called for giving States more flexibility to design their own systems for differentiating performance on indicators. Some of these commenters believe this would result in a less complicated and more user-friendly accountability system, while one commenter noted that the same policy goals behind performance levels could be reached in other ways, such as comparing performance on each indicator to State averages or similar schools. Other commenters asserted that the requirement for performance levels is inconsistent with the ESEA, as amended by the ESSA, or that it violates the prohibition in section 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, regarding the specific methodology used by States to meaningfully differentiate or identify schools—noting that the only performance levels required under the statute are the academic achievement standards under section 1111(b)(1).

Discussion: We appreciate the support from many commenters for the requirement for States to establish performance levels on each indicator as part of the system of annual meaningful differentiation. We agree that an overall determination for a school is most useful and effective when coupled with clear information, such as would be provided by State-determined performance levels, on the underlying data, which helps contribute to a better understanding of how that data led to the school's final determination. We also believe that a clear set of performance levels provide the context parents and the public need to understand whether a school's performance is adequate, or exemplary, context that otherwise may not be evident from comparisons to district and State averages on LEA report cards.

We note, however, that performance levels are not intended to create AYP-like thresholds for individual subgroups that definitively determine school identification, which some commenters viewed as undermining the validity and reliability of schools' accountability designations in the past; rather, States must report school results on each indicator against the State-determined performance levels as part of their overall system of meaningful differentiation of schools on LEA report cards. We also note that States have discretion to develop their own criteria for performance levels, including norm-referenced approaches linked to State averages or performance quartiles—so long as the levels are consistent with attainment of the long-term goals and measurements of interim progress and clear and understandable, as demonstrated in its State plan. In addition, to help clarify the role of performance levels in providing schools with a summative determination and the distinction between this more flexible approach and AYP, we are revising § 200.18(a)(4) to indicate that the summative determination is ''based on differing levels of performance on the indicators,'' rather than on ''each indicator.''

In response to commenters who stated that the requirement to establish at least three levels of performance on all indicators exceeds the Department's authority because it was not explicitly included in the statutory text, as previously discussed (see discussion of the Department's legal authority under the heading *Cross-Cutting Issues*), given the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and that the requirement falls within the scope of section 1111(c) of the ESEA, as amended by the ESSA, consistent with section 1111(e), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision. Further, the requirements in § 200.18(a)(2)–(3), as renumbered, for States to adopt and report on a school's performance, from among at least three levels of performance, on each indicator are necessary to reasonably ensure that parents and the public receive comprehensive, understandable information on school performance on LEA report cards—information that can empower parents, lead to continuous improvement of schools, and guide decision-making at the local and State levels.

By increasing transparency, performance levels help reinforce the statutory purpose of title I: ''to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.'' Without such a requirement, publicly reported information on the accountability system would lack the comparative information needed to determine whether all children were receiving an equitable education and closing such gaps on a host of measures. This is because data presented on LEA report cards ''must include a clear and concise description of the State's accountability system'' consistent with section 1111(h)(1)(C)(i) and 1111(h)(2)(c) of the ESEA, as amended by the ESSA, yet is not (with the exception of academic assessments under section 1111(b)(2)) presented in any context, such as by reporting on the distribution of data at the State or LEA level compared to a school's results. Thus, any contextual information for parents and the public from the accountability system regarding whether schools and LEAs are living up to this purpose would be missing, absent a performance level requirement.

Additionally, these requirements are not inconsistent with section 1111(e)(1)(B)(iii)(V) because they do not prescribe a particular methodology that a State must use to annually differentiate or identify schools. States will have discretion to determine how best to meet the requirement within the overall design of their system. For example, each State will need to decide what the performance levels should be for each indicator; whether the same performance levels should be used for each indicator; how many levels are appropriate; how the levels will be incorporated into the overall system, such as whether they will be part of the basis for identifying consistently underperforming subgroups; and the particular methodology it will use to determine a level for each school.

Changes: We have revised § 200.18(a)(4) to require that a school's summative determination be based on ''differing levels of performance on the indicators'' rather than on the school's performance level on ''each indicator.''

Comments: One commenter suggested that requiring indicator performance levels to inform the summative rating could mask the performance of low-performing subgroups in the context of an overall rating, as the performance levels would not necessarily be disaggregated for each subgroup in the school. The commenter believed the proposed requirements were insufficient to ensure States comply with the statutory requirement under section 1111(c)(4)(C)(iii) for annual meaningful differentiation to include differentiation of consistently underperforming subgroups. Instead, the commenter suggested requiring a school with a consistently underperforming subgroup to receive a lower summative rating

than it would have otherwise received if one of its subgroups of students was not consistently underperforming.

Discussion: We agree that the proposed regulations were not clear on the relationship between performance levels and subgroup accountability. Our intent was not to require a system of performance levels for each subgroup on each indicator, but to ensure that performance levels reflect a State's long-term goals for all students and each subgroup of students. For example, if a State sets a goal of achieving a 90 percent four-year graduation rate for all students and each subgroup of students, a school with only 70 percent of English learners and Black students graduating in four years should not receive the highest performance level for that indicator. We recognize, however, that not all indicators have a corresponding long-term goal; this provision was only intended to apply to indicators for which there is a related long-term goal (*i.e.,* academic achievement, graduation rates, and ELP), and we are revising the final regulations for clarity so that this requirement only includes indicators where an applicable long-term goal exists. Further, we are also revising § 200.18(a)(6), as renumbered, to reinforce the overall importance of subgroup accountability by stating that the system for differentiation of schools must inform identification of consistently underperforming subgroups.

Finally, we also agree with the commenter that to ensure differentiation for consistently underperforming subgroups, as required by section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, it is helpful to require any school with a consistently underperforming subgroup of students to receive a lower summative determination than it would have otherwise received, and we are revising § 200.18(c)(3) accordingly.

Changes: We have renumbered and revised § 200.18(a)(2)–(3) to further clarify the relationship between subgroup performance and the performance levels on each indicator. Section 200.18(a)(2) clarifies that the three performance levels on each indicator must be consistent with attainment of the long-term goals and measurements of interim progress, if applicable, because the State is only required to establish goals and measurements of interim progress for some indicators (*i.e.,* Academic Achievement, Graduation Rate, and Progress in Achieving English Language Proficiency). In addition, we have renumbered and revised § 200.18(a)(6) to reiterate that the system of meaningful differentiation must inform the State's methodology for identifying schools for comprehensive and targeted support and improvement, including differentiation of schools with a consistently underperforming subgroup of students.

Finally, we have renumbered and revised § 200.18(c)(3) to require that each State, in order to meet the requirements for annual meaningful differentiation under § 200.18(a), demonstrate that any school with a consistently underperforming subgroup of students receives a lower summative determination than it otherwise would have received had no subgroups in the school been so identified.

Comments: One commenter recommended revising the requirement for each State to establish at least three levels of school performance on each indicator under proposed § 200.18(b)(2) so that binary measures would be permitted, which could distinguish between schools that met or did not meet a certain threshold, providing additional flexibility for States. Another commenter suggested clarifying that continuous measures would be permissible to meet the requirement for setting performance levels on each indicator. For example, the commenter suggested that an indicator measured on a 0–100 scale could meet the requirement, without further aggregation, because it arguably results in 101 performance levels. This comment was consistent with others that supported the adoption of data ''dashboards'' as the primary basis for school accountability determinations, or the increased use of scale scores or raw performance data for accountability purposes.

Discussion: While it is important to understand whether a school is meeting a particular performance expectation, such information may be incorporated into a system that includes three levels of performance, while a binary measure would not support differentiation among above-average, typical, and below-average performance. Given the statutory requirement for meaningful differentiation between schools, we believe requiring at least three performance levels on each indicator is necessary to meet this requirement. We also believe the requirement for three levels is not limiting on States, as nearly any binary measure can be expressed in three or more levels (*e.g.,* ''approaching,'' ''meets,'' and ''exceeding'').

Similarly, the intent of the provision was to encourage State-determined performance levels that provide meaningful information on each indicator. Merely reporting that a school received 55 out of a possible score of 100 on an indicator, for example, does not include any context about whether a 55 is a typical score, or whether this is an area where the school is lagging or exceeding expectations. Thus, a continuous measure does not meet the requirement to establish at least three levels of performance for each indicator, as it would otherwise be no different than reporting raw data for each indicator; the performance levels must be ''discrete.'' We recognize that a data ''dashboard'' holds potential to be a useful tool for communicating information on school quality and may be used by a State to meet this requirement, as reflected in revised § 200.18(a)(3), so long as the data on the ''dashboard'' is presented in context by creating bands of performance or performance thresholds, so that parents and the public have clear information on whether a school's level of performance is acceptable. The requirement for performance levels on each indicator does not prohibit the use of a data ''dashboard'' that shows the full scale of values for an indicator; rather, it requires States to make distinctions between schools based on the data presented in the ''dashboard,'' such as by performance bands or quartiles.

Changes: We have renumbered and revised § 200.18(a)(2)–(3) to clarify that a State must, as part of its system of annual meaningful differentiation, include at least three distinct and discrete performance levels on each indicator, as opposed to continuous measures or scale scores, and may use a data ''dashboard'' on its LEA report cards for this purpose.

Comments: One commenter requested the Department require, for the Academic Achievement indicator, that a State's academic achievement standards under section 1111(b)(1) of the ESEA, include below proficient, proficient, and above proficient levels of performance.

Discussion: We appreciate the commenter's suggestions on ways to ensure that academic achievement standards are rigorous and set high expectations for all students. Although framed as a comment about performance levels, the commenter is actually requesting that the Department regulate on academic achievement standards, which require negotiated rulemaking. Consequently, the Department is not authorized to make the requested change through these final regulations.

Changes: None.

Weighting of Indicators

Comments: Numerous commenters were concerned that the proposed regulations overemphasized the role of student achievement, as measured by assessments in math and reading/language arts, in the system of annual meaningful differentiation of schools. Some of these commenters opposed the general requirements in proposed § 200.18(c)(1)–(2) to afford indicators of Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency ''substantial'' weight, individually, and ''much greater'' weight, in the aggregate, than indicators of School Quality or Student Success. A number of commenters, however, strongly supported proposed § 200.18(c)(1)–(2), recognizing that the language regarding ''substantial'' and ''much greater'' weight was taken from section 1111(c)(4)(C) of the ESEA, as amended by the ESSA.

Discussion: We appreciate that consideration of a greater number of factors in measuring school quality can help shed light on important aspects of school performance. However, we agree with other commenters that the provisions in proposed § 200.18(c)(1)–(2) are based on the statutory requirements related to the weighting of indicators, which ensure that students' academic outcomes and progress remain a central component of accountability.

Changes: None.

Comments: A number of commenters supported the provisions in proposed § 200.18(d) for how States demonstrate they meet the requirements for weighting of indicators and recommended maintaining them in the final regulation. These commenters variously stated that the requirements (1) provide helpful clarification on the vague statutory terms ''much greater'' and ''substantial'' weight; (2) erect necessary guardrails to ensure that student academic outcomes, including for low-performing subgroups, drive the differentiation of schools and identification for support and improvement within State-determined, multi-measure accountability systems; and (3) preserve State discretion over weighting of indicators in their accountability systems by focusing on outcomes, rather than particular weighting methodologies or percentages. While many of these commenters recognized, and often appreciated, the addition of new School Quality or Student Success indicators to add nuance to the accountability system, they strongly believed that student academic outcomes should have the greatest influence on differentiation and identification of schools for support and were concerned that, absent these regulations, accountability systems would undercut the importance of student learning. In addition, many commenters stated that the requirements strike an appropriate balance, noting that States could adopt a myriad number of approaches and methodologies for weighting their accountability indicators, based on their particular goals and needs.

Numerous commenters, however, objected to these requirements, stating that they would prevent new School Quality or Student Success indicators from having a meaningful impact in statewide accountability systems, including by affecting the differentiation of school performance, identification for support and improvement, or the school improvement process. While they recognized that these indicators are not afforded ''substantial'' weight under the statute, they believed the proposed regulations would result in little or zero weight for these measures and an overemphasis on test-based measures. In addition, several commenters believed the requirements related to demonstrating the weighting of indicators discourage the collection of more nuanced accountability measures such as school climate or chronic absenteeism. Other commenters variously stated that the requirements for weighting would be best determined by stakeholders; result in more a complex and less transparent system for parents and the public; inhibit creative approaches to differentiating school performance and be overly prescriptive; inappropriately limit State flexibility in a manner that is inconsistent with the ESEA, as amended by the ESSA; or violate section 1111(e)(1)(B)(iii)(IV)–(V) of the ESEA, as amended by the ESSA, which provides that nothing in the statute authorizes or permits the Secretary to prescribe the weight of any measure or indicator or the specific methodology used by States to meaningfully differentiate or identify schools.

Discussion: We agree with commenters that it is vital to provide guardrails for State systems of annual meaningful differentiation that clarify and support effective implementation of the statutory requirements for certain indicators to receive ''substantial'' and ''much greater'' weight, and that these are ambiguous terms that warrant specification in regulation, given the influence of indicator weighting on how schools will be annually differentiated and identified for support and improvement. Section 1111(c)(4)(C)(ii) of the ESEA, as amended by the ESSA, requires academic indicators to have a larger role in annually differentiating schools, relative to School Quality or Student Success indicators, which in turn influences school identification. Moreover, we share the views of commenters who believe it is important for student academic outcomes, including for subgroups, to be at the heart of the accountability system in order to safeguard educational equity and excellence for all students.

In response to commenters who argued that the requirements for these demonstrations exceed the Department's authority because they are not explicitly authorized by the statute, as previously discussed (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision, given the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA. Further, the requirements in § 200.18(c), as renumbered, are within the scope of, and necessary to reasonably ensure compliance with, the requirements for the weighting of indicators set forth in section 1111(c)(4)(C)(ii) of the ESEA, as amended by the ESSA, and for differentiation of schools with consistently underperforming subgroups set forth in section 1111(c)(4)(C)(iii), and therefore do not violate section 1111(e). If a school could receive the same overall determination, regardless of whether one of its subgroups was consistently underperforming or not, a State's system could not reasonably be deemed to ''include differentiation of any . . . school in which any subgroup of students is consistently underperforming, as determined by the State, based on all indicators'' as required by section 1111(c)(4)(C)(iii). Similarly, if a school can go unidentified for support and improvement, despite the fact that this school would have been in the bottom five percent of title I schools based on substantially weighted indicators and despite not making significant progress for all students on substantially weighted indicators, the State's system of meaningful differentiation is not providing those indicators ''much greater'' and ''substantial'' weight, as required by section 1111(c)(4)(C)(ii). In both cases, failing to meet the demonstrations in § 200.18(c) means that factors identified by the statute as requiring extra emphasis (*i.e.,* substantially weighted indicators and

consistently underperforming subgroups) received insufficient attention and did not result in ''meaningful'' differentiation.''

Additionally, the requirements in § 200.18(c), as renumbered, for States to demonstrate how they have weighted their indicators and ensured differentiation of consistently underperforming subgroups by examining the results of the system of annual differentiation and the schools that are identified for support and improvement are consistent with section 1111(e)(1)(B)(iii)(IV)–(V) of the ESEA, as amended by the ESSA, because they do not prescribe the weight of any indicator, nor a particular methodology that a State must use to annually differentiate schools, such as an A–F grading system. There are numerous weighting schemes and processes for differentiating and identifying schools that could meet these requirements—including percentages for each indicator, business rules or other mechanisms to ensure certain schools are identified or flagged for having a consistently underperforming subgroup or low performance on ''substantial'' indicators, or a matrix approach where a particular combination of performance across various indicators results in identification.

We agree with many commenters that an approach that focuses on outcomes (*i.e.,* the overall determination for the school and the schools that are identified for support and improvement), is both appropriate and necessary to ensure compliance with the requirements in section 1111(c)(4)(C)(ii)–(iii) of the ESEA that emphasize certain academic indicators and the importance of differentiating schools with underperforming groups of students, while maintaining State discretion to develop its system of meaningful differentiation. Because these demonstrations can apply to any methodology a State designs, they provide the Department a way to verify a State has met critical statutory requirements for indicator weighting and differentiation of subgroups, without stifling the new flexibility States have to adopt innovative approaches to differentiate and identify schools for support, including those that use categorical labels instead of a numerical index.

We recognize and agree that the intention of the ESSA was to create State accountability systems based on multiple measures; however, we disagree with commenters that § 200.18(c) will result in a less transparent, overly complicated, and test-driven accountability system. Under both the NCLB and ESEA flexibility waivers, States often adopted business rules or other mechanisms to ensure school identification based on their accountability systems was aligned with definitions for categories of identified schools, and we are confident that similar approaches can be used to ensure compliance with the definitions and requirements in the ESSA. Further, section 1111(h)(1) of the ESEA and §§ 200.30–200.33 require annual State and LEA report cards to include a full description of the accountability system, including the weighting of indicators, to ensure parents have a clear understanding of how differentiation and identification work in their State. Under these regulations, States ultimately have the responsibility to design accountability systems that meet the statutory requirements for weighting of indicators and as a result, may develop systems for weighting that are either straightforward or more complex. We strongly encourage States to consider the value of clarity and transparency in developing their systems, and to develop them in close consultation with stakeholders who will be regularly using the information produced by the accountability system, including parents, educators, and district-level officials, among others.

Finally, we note that School Quality or Student Success indicators must, and should, play a role in providing schools with annual determinations and identifying them for improvement and clarify that the requirements in § 200.18(c) do not prohibit School Quality or Student Success indicators from being taken into account for these purposes. Each school's overall determination under § 200.18(a)(4) must reflect all of the indicators the State uses, and we believe there are significant opportunities for States to develop new and meaningful indicators, as discussed further in response to comments on § 200.14. Because these demonstrations are simply meant to ensure that—regardless of a school's summative determination—the substantially weighted indicators receive sufficient emphasis in determining whether a school needs support and improvement, we believe the final regulations do not discourage the adoption of innovative approaches to measure school success or the collection of new indicators and that many methods (as previously described) can meet them.

Changes: None.

Comments: Numerous commenters provided feedback on both ways that a State must demonstrate it meets the statutory provisions for weighting of indicators described in proposed § 200.18(d)(1)–(2), which requires that an indicator of School Quality or Student Success may not be used to change the identity of a school that would otherwise be identified for interventions, unless such a school was also making significant progress on a substantially weighted indicator, for the same reasons they supported or opposed proposed § 200.18(d) generally, as described previously.

In addition, several commenters had specific concerns about these provisions, feeling that under proposed § 200.18(d)(1)–(2) a School Quality or Student Success indicator could only be used to penalize, rather than reward, schools in the State's system of annual meaningful differentiation. In doing so, they believed the proposed regulations eliminated a valid rationale (*i.e.,* performance on School Quality or Student Success indicators) for differentiating between schools and undermined the reliability and validity of school identification. A few of these commenters also raised objections that the proposed demonstrations potentially conflict with exit criteria in §§ 200.21 and 200.22 by requiring improvement on test-based measures. One commenter suggested that the proposed demonstrations in § 200.18(d)(1)–(2) were unnecessary, so long as States identified the required percentage of the lowest-performing schools for comprehensive support and improvement.

Discussion: We disagree with commenters that these demonstrations are unnecessary. While States are required to identify certain schools for targeted and comprehensive support and improvement, including at least the lowest-performing five percent of title I schools, the requirements for weighting indicators are a distinct requirement under section 1111(c)(4)(C)(ii) of the ESEA, as amended by the ESSA, that must be taken into account when identifying schools, in addition to any statutory requirements regarding the categories or definitions of identified schools.

We also disagree that the proposed regulations failed to account for the positive role that School Quality or Student Success indicators can play in a State's accountability system or would lead to invalid determinations because these factors were not considered; we believe that some of these concerns may be ameliorated by further explanation and clarification of how the demonstrations will work. Under the proposed and final regulations, each school's level of performance on all

indicators must be reported and factored into the school's summative determination under § 200.18(a)(2)–(4), including School Quality or Student Success indicators. Schools that do well on indicators of School Quality or Student Success should see those results reflected in both their performance level for that indicator (which may be part of a data ''dashboard''), and in their overall determination (*e.g.,* an overall numerical score or grade, a categorical label like ''priority'' or ''focus'' schools, etc.). The separate requirements in § 200.18(c)(1)–(2), as renumbered, are intended to help States demonstrate that their methods afford ''much greater'' weight to the academic indicators, in the aggregate, than to indicators of School Quality or Student Success not by focusing solely on school summative determinations, but by analyzing school identification for comprehensive and targeted support and improvement—this will serve as a check to ensure that, on the whole, each substantially weighted indicator is receiving appropriate emphasis in the State's accountability system and that schools struggling on these measures receive the necessary supports.

These requirements are completely distinct from exit criteria, which are described in §§ 200.21–200.22 and apply to schools that have been implementing comprehensive and targeted support and improvement plans. The demonstrations described in § 200.18(c)(1)–(2) happen earlier in the accountability process to help determine which schools should be identified and subsequently placed in support and improvement. In particular, a State would meet these demonstrations for indicator weighting by flagging any unidentified school that met two conditions: (1) The school would have been identified if only substantially weighted indicators had been considered; and (2) the school did not show significant progress from the prior year, as determined by the State, on any substantially weighted indicator. While schools are expected, under §§ 200.21–200.22, to make progress in order to exit improvement status, the progress referenced in proposed § 200.18(d)(1)–(2) could avoid entry into improvement status altogether. We believe that minor clarifications to proposed § 200.18(d)(1)–(2) can help clarify how these requirements are intended to be implemented.

Changes: We have renumbered and revised § 200.18(c)(1)–(2) to distinguish these requirements for demonstrating the weight of indicators from exit criteria that remove schools from identified status, as specified in §§ 200.21 and 200.22. We have also revised § 200.18(c)(1)–(2) to clarify that these demonstrations are intended to verify that schools that would hypothetically be identified on the basis of all indicators *except* School Quality or Student Success, but were excluded from identification when the State considered all indicators, have been appropriately categorized in a status other than comprehensive support and improvement or targeted support and improvement, because these schools made significant progress on the accountability indicators, including at least one that receives ''substantial'' weight.

Comments: Some commenters asked for additional guidance on what significant progress means, or for revisions to clarify that significant progress is determined by the State. One commenter further suggested that we strike the expectation for significant progress, and replace it with a demonstration of sufficient progress.

Discussion: We agree with commenters that it is helpful to make clear that significant progress, in the context of the demonstrations for indicator weighting required under renumbered § 200.18(c)(1)–(2), is defined by the State based on the school's performance from the prior year, and are revising the final regulations accordingly. Given that States have this discretion to define significant progress in context of their unique indicators and goals, we believe additional examples or considerations for ''significant progress'' are best addressed in non-regulatory guidance.

Changes: We have revised § 200.18(c)(1)–(2) to clarify that the meaning of significant progress from the prior year, as determined by the State, on a substantially weighted indicator as part of these demonstrations.

Comments: A few commenters asserted that the proposed regulations complicated the statutory requirements for ''substantial'' and ''much greater'' weight and recommended alternative approaches, such as requiring that School Quality or Student Success account for less than 50 percent of all indicators in a statewide accountability system, or that each indicator be weighted equally at 25 percent (meaning that non-School Quality or Student Success indicators would make up 75 percent of the overall rating). Finally, some commenters recommended additional guidance on the weighting of indicators, including specific percentages that might be afforded to certain indicators consistent with statutory and regulatory requirements, as well as how to demonstrate compliance with §§ 200.18(d)(1) and (2).

Discussion: We agree with commenters that further examples and discussion to clarify the requirements for weighting of indicators in § 200.18(c) would be helpful and should be addressed in any non-regulatory guidance the Department issues to support States in implementation of their accountability systems.

Because States retain the discretion to develop numerous methods for annual meaningful differentiation, including those that build on data ''dashboards'', use a two-dimensional matrix, or rely on categorical labels rather than a numerical index, we believe it would be inappropriate to regulate that a particular percentage for each indicator, or set of indicators, would meet the statutory requirements to afford academic indicators ''substantial'' and ''much greater'' weight, as it could imply that only numerical indices were permitted. Although we are not including any percentages in the final regulations, we also note that we disagree with commenters suggesting that ''much greater'' weight for academic indicators could be as little as half of the overall weight in the system of differentiation—''much greater'' implies that these indicators should be afforded well over 50 percent of the weight.

Changes: None.

Comments: One commenter stated that the required demonstrations for States related to weighting of indicators could create confusion for rural or small schools where data on the ''substantial'' (in particular, those based on student assessment results) indicators may not be available due to n-size limitations.

Discussion: We recognize the commenter's concern that there are cases where a school may be missing a particular indicator for a number of reasons, which would complicate meeting the requirements in § 200.18(c). As discussed in greater detail below under the subheading *Other Requirements in Annual Meaningful Differentiation of Schools,* we are revising § 200.18(d)(1)(iii) to include a provision previously in proposed regulations for consolidated State plans that permit a State to propose a different methodology for very small schools, among other special categories of schools, in annual meaningful differentiation, which would include how indicators are weighted.

Changes: None.

Comments: Numerous commenters provided feedback to the Department on proposed § 200.18(d)(3), which would require each State to demonstrate that a

school performing at the State's highest performance level on all indicators received a different summative rating than a school performing at the lowest performance level on any substantially weighted indicator, based on the performance of all students and each subgroup of students in a school, citing the same reasons they generally supported or opposed the requirements in proposed § 200.18(d) overall.

However, a number of commenters raised additional concerns that were specific to proposed § 200.18(d)(3). Several commenters felt the requirement would undermine the transparency of summative ratings, because a single low-performing subgroup could prevent a school from receiving the highest possible distinction in the State's accountability system. They further noted that the proposed demonstrations felt like a return to the top-down and prescriptive system of AYP, which the ESSA eliminated in favor of greater flexibility for States with respect to the design of accountability systems and determinations. In addition, a few commenters suggested eliminating this provision, citing their overall objection to summative ratings.

Other commenters suggested replacing this demonstration with a requirement that would emphasize differentiation of schools with consistently underperforming subgroups of students, believing that § 200.18(d)(3), as proposed, created incentives for States to establish a very small ''highest'' rating category (*e.g.,* an A+ category of schools in an A–F system), so that schools could still receive a very high rating when one or two subgroups were struggling on a substantially weighted academic indicator. They recommended requiring a State to demonstrate that any school with a consistently underperforming subgroup of students, as identified under § 200.19, would be assigned a lower summative rating than it would have otherwise received as a stronger way to ensure States' systems of annual meaningful differentiation meet the statutory requirement to differentiate schools with consistently underperforming subgroups.

Discussion: We appreciate many commenters' views on the importance of upholding the statutory requirements for the academic indicators to receive ''substantial'' weight individually, and ''much greater'' weight in the aggregate, in each State's system of annual meaningful differentiation, and their recognition that this is particularly important to ensure subgroup performance is meaningfully recognized in the State's accountability system. Moreover, the statute requires the Academic Achievement, Academic Progress, Graduation Rate, and Progress in Achieving English Language Proficiency indicators to have a ''much greater'' role in school differentiation, compared to School Quality or Student Success indicators, and we share the views of commenters who believe that student academic outcomes, including outcomes for subgroups, must be a primary focus of the accountability system as a way to promote equity and excellence for all students.

We agree with commenters that these ends, however, would be better realized by revising the proposed regulations to require that a school with a consistently underperforming subgroup of students receive a lower summative determination than it would have otherwise received if the subgroup were not consistently underperforming, given the commenters' argument that the proposed regulations did not adequately include the statutory requirement differentiate schools with a consistently underperforming subgroup. We believe the suggestion of linking this demonstration to consistently underperforming subgroups of students better reinforces the requirement in section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, for a State's system of annual meaningful differentiation to include differentiation of schools with a consistently underperforming subgroup; we agree that if a school is able to receive the same overall determination, regardless of whether a subgroup is underperforming, a State has not met this requirement. We also agree with the commenter that this approach will provide less of an incentive for States to create a very small ''highest'' category (an ''A+'' category), rather than remove schools from an exemplary category (an ''A'' grade) due to subgroup performance.

While we recognize commenters' concerns that this demonstration, as proposed, would undermine the transparency of school determinations or would require States to develop an AYP-like accountability system, we believe that such concerns are outweighed by the statutory requirement that consistently underperforming subgroups must be meaningfully differentiated each year and be identified for targeted support and improvement—and believe that an accountability system is not communicating school performance clearly to the public if a consistently underperforming subgroup is not reflected in a school's overall performance designation. Finally, in response to commenters that opposed this provision as proposed due to their opposition to summative ratings for schools, as the final regulation clarifies that the summative determination may be aligned to the categories required for school identification (in which case, schools with a consistently underperforming subgroup would be in targeted support and improvement), we believe the revisions to § 200.18(a)(4) address their concerns.

Changes: We have renumbered and revised § 200.18(c)(3) to require that each State, in order to meet requirements for annual meaningful differentiation under § 200.18(a) and section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, demonstrate that any school with a consistently underperforming subgroup of students receives a lower summative determination than it otherwise would have received had no subgroups in the school been so identified.

Comments: A few commenters suggested replacing all three of the demonstrations related to indicator weighting with an alternative requirement that States demonstrate in their State plans how the academic indicators carry ''much greater'' weight than non-academic indicators, and how the State's methodology to identify schools will ensure that schools with low performance on indicators receiving ''much greater'' weight will be identified for improvement as a result.

Discussion: We appreciate the commenters' recognition that a State's system for weighting indicators should align with its methodology for identifying schools for comprehensive and targeted support and improvement. While we disagree that the demonstrations in § 200.18(c), as renumbered, are unnecessary (as previously described), we agree that schools performing poorly on substantially weighted indicators should be more likely to be identified for intervention, and the focus on the outcomes of the system of annual meaningful differentiation (rather than inputs) is consistent with our approach to the weighting requirements generally. To reiterate this focus on outcomes and ensure that, through its State plan, each State describes how it is meeting the underlying purpose of the requirements in § 200.18(c)(1)–(2) related to weighting, we are revising § 200.18(d)(1)(ii) to specify that the overall goal behind the requirements for weighting indicators is to ensure that schools performing poorly across the indicators receiving ''much greater'' weight are more likely to be identified for support and improvement under

§ 200.19 and to include this explanation in the State plan with the State's demonstration of how it is meeting the requirements of § 200.18(c).

Changes: We have revised § 200.18(d)(1)(ii) to require that each State describe in its State plan how it has met all of the requirements of this section, including how the State's methodology for identifying schools for comprehensive support and improvement and targeted support and improvement ensures that schools with low performance on substantially weighted indicators are more likely to be so identified.

Comments: Several commenters supported the clarification in proposed § 200.18(e)(2) that the indicators required by the statute to receive ''substantial'' weight (Academic Achievement, Graduation Rate, Academic Progress, and Progress in Achieving English Language Proficiency) need not be afforded the same ''substantial'' weight in order to meet the requirement—promoting flexibility and discretion for States in designing their accountability systems under the ESSA and weighting indicators based on State-determined priorities and goals.

Discussion: We appreciate the commenters' support for this provision.

Changes: None.

Comments: A few commenters expressed support for the requirements in proposed § 200.18(c)(3) and (e)(3) that States maintain the same relative weighting between the accountability indicators for all schools within a grade span, including for schools that are not held accountable for the Progress in Achieving English Language Proficiency indicator, as a way to maintain consistency and fairness in States' systems for differentiating schools. Other commenters, however, opposed the requirement. Some believed the requirement goes beyond the statute because the only requirements related to grade spans in section 1111(c) of the ESEA, as amended by the ESSA, are related to indicators of School Quality or Student Success. Others thought the requirement was an overly prescriptive intrusion on State discretion over the weighting of indicators, as States will be in a better position to determine a method to maintain comparable and fair expectations for all schools. A few other commenters requested that we modify the relative weighting requirement so that States may vary the weighting between indicators not only by grade span, but also based on the characteristics of students served by the school or the amount of data available for a given indicator in a school; these commenters believed, for example, that school demographics could make one indicator more relevant than other indicators, and thus deserving of greater weighting, in measuring school performance. Similarly, commenters questioned how this provision would work in small schools and in schools that serve variant grade configurations. However, another commenter believed that all schools should be held accountable for the Progress in Achieving English Language Proficiency indicator, regardless of the number of English learners in the school, to ensure that States selecting higher n-sizes do not avoid accountability for ELP.

Discussion: We appreciate that commenters want to ensure States have the ability to establish multi-indicator accountability systems that are fair for all schools and accurately capture a school's overall impact on student learning, consistent with the requirements for substantially weighing certain indicators, and agree that requiring the same relative weighting among all schools within a grade span should be maintained.

We recognize that it is challenging to have a system of annual meaningful differentiation with completely uniform weighting, given differences in school size, grade configurations, and special populations of students served. Therefore, we are revising the regulations, as discussed previously, to permit States to propose alternative approaches that are used to accommodate special kinds of schools. However, very small schools or schools with variant grade configurations that do not fit into a single grade span are the exception, not the norm; we believe it is paramount to ensure that schools are treated consistently in the system of annual meaningful differentiation given the consequential decisions (*e.g.,* identification for comprehensive or targeted support and improvement, eligibility for school improvement funding) that flow out of this system. The statute requires a statewide, multi-indicator accountability system, and a non-uniform weighting scheme between those indicators across a State would undermine this requirement significantly. States retain significant flexibility to design the statewide weighting scheme *between* each grade span using their various indicators, but without uniform weighting *within* each grade span, the methodology for differentiating schools and identifying them for support and improvement could be unreliable from district to district, or worse, biased against particular schools or set lower expectations for certain schools, based on the population of students they serve.

Thus, it is crucial that all of the accountability indicators be afforded the same relative weights across schools within a grade span to reasonably ensure compliance with the statutory requirements in section 1111(c) regarding a *statewide* system of annual meaningful differentiation and identification of schools for support and improvement, including the weighting of indicators in section 1111(c)(4)(c). As such, this regulation falls squarely within the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA and within the scope of section 1111(c) of the ESEA, as amended by the ESSA, and therefore does not violate section 1111(e). For example, allowing the Academic Achievement indicator to matter more for subgroups that are already high achieving, and less in schools where subgroups are low-performing, would be both inconsistent with the purpose of the accountability system to improve student achievement and school success, and introduce bias into the system of differentiation. In response to commenters who noted this provision was not explicitly referenced in the statutory text, given the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

In general, because the Progress in Achieving English Language Proficiency indicator is the sole indicator that is measured for a single subgroup, we believe it is helpful to clarify that the relative weighting of indicators must be maintained when a school cannot be held accountable for this indicator due to serving a low number of English learners; as the n-size will be determined by each State, and as some schools may not serve any English learners, we cannot require all schools to be held accountable on the basis of this indicator. Since the statute creates this distinction (by creating one of the five required indicators around a single subgroup), we believe it is appropriate to include a specific exception to the relative weighting requirement based on this indicator, but to limit other exceptions to the relative weighting requirement.

Changes: None.

Comments: A few commenters suggested that the Department encourage each State to emphasize

student growth or progress, over absolute achievement, when weighting its accountability indicators consistent with proposed § 200.18(c)(1)–(2), because they believe student growth more accurately reflects the impact of a school on student learning than a measure of achievement taken at a single point in time.

Discussion: We agree that student academic growth is a critical measure to include in State accountability systems, and encourage all States to incorporate both achievement and growth into the annual differentiation of schools, because a student growth measure can reveal and recognize schools with low achievement levels that nevertheless are making significant strides to close achievement gaps and thus should be celebrated, and may not need to be identified for improvement. However, we believe it is most consistent with the statute for each State, and not the Department, to determine whether using student growth is appropriate for its accountability system, and to select the weight afforded to student growth relative to other required indicators.

Changes: None.

Other Requirements in Annual Meaningful Differentiation of Schools

Comments: Several commenters suggested that § 200.18 should include additional references to stakeholder engagement, including consultation with parents, district and school leaders, educators and other instructional support staff, and community members, in developing the system of annual meaningful differentiation. One commenter suggested such engagement be expanded to include the creation of parent and community advisory boards to develop and implement the system of differentiation used in their State and LEA, while another commenter suggested schools be held accountable for how well they involve parents in key decisions and improvement efforts.

Discussion: The requirements for annual meaningful differentiation of schools in § 200.18 already are subject to requirements for timely and meaningful consultation as part of the consolidated State plan regulations, and we believe additional emphasis on stakeholder engagement here is unnecessary.

Changes: None.

Comments: A number of commenters supported the reiteration of statutory requirements in proposed § 200.18(b)(1) for the system of annual meaningful differentiation to include the performance of all students and each subgroup of students on every required accountability indicator, consistent with the requirements for inclusion of subgroups in § 200.16, for n-size in § 200.17, and for partial enrollment in § 200.20. Other commenters objected to these requirements as precluding certain indicators that could provide helpful information to differentiate between schools but could not be disaggregated for each student subgroup, such as teacher or parent surveys or whole-school program evaluations.

Discussion: Section 1111(c)(4)(B) of the ESEA, as amended by the ESSA, is clear that each indicator used in statewide accountability systems must be disaggregated by subgroup, with the exception of the Progress in Achieving English Language Proficiency indicator, which is only measured for English learners. Further, section 1111(c)(4)(C) states that meaningful differentiation of schools must be based on all indicators for all students and for each subgroup of students.

Changes: None.

Comments: A few commenters objected to the requirements in proposed § 200.18(b)(5) for the system of annual meaningful differentiation to meet requirements in § 200.15 to annually measure the achievement of at least 95 percent of all students and 95 percent of students in each subgroup on the required assessments in reading/language arts and mathematics.

Discussion: Section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, requires each State to measure the achievement of at least 95 percent of students and 95 percent of students in each subgroup and factor this participation requirement into the statewide accountability system, and this provision only reiterates regulatory requirements described further in § 200.15.

Changes: None.

Comments: A number of commenters requested additional flexibility or exceptions to the requirements for annual meaningful differentiation for certain categories of schools, such as rural schools, small schools, schools that combine grade spans (*e.g.,* a K–12 schools), and alternative schools (*e.g.,* schools serving overage or under-credited students, other dropout recovery programs, or students with disabilities who may need more time to graduate). These commenters generally acknowledged the need to hold such schools accountable for their performance, but sought flexibility to use different indicators or methods that they believe would be more suited to the unique needs and circumstances of these schools. One commenter noted that while proposed § 299.17 would permit States to propose different methods for differentiating school performance in their consolidated State plans, it was not sufficiently clear whether this flexibility extended to school identification. Other commenters expressed concerns about creating loopholes in the accountability system for schools that serve vulnerable and historically underserved student populations.

Discussion: We appreciate the commenters' concerns with designing accountability systems that are inclusive of all schools and provide fair, consistent methods for reporting school performance and determining when additional interventions and supports are necessary. We share these goals, which is why proposed § 299.17 permitted States flexibility to develop or adopt alternative methodologies under their statewide accountability systems that address the unique needs and circumstances of many of the schools cited by commenters.

This flexibility, which is similar to past practice under NCLB, is also intended to apply to both annual meaningful differentiation and identification of schools under §§ 200.18 and 200.19, and allows a State, if it desires, to propose an alternative way for producing an annual determination for these schools (based on the same, or modified, indicators) and for identifying these schools for comprehensive or targeted support and improvement. We are revising § 200.18(d)(1)(iii) to include the list of schools for which a State may use a different methodology for accountability previously included in § 299.17, with additional clarification or examples to better explain why such schools might require this flexibility. We note, however, that this provision allows for this flexibility only where it is impossible or inappropriate to include all of the indicators a State typically uses to differentiate schools, and thus is not generally applicable to regular public schools, including most rural schools.

Changes: We have revised § 200.18(d)(1)(iii) to include clarifying language, previously in proposed § 299.17, that a State may propose a different methodology for annual meaningful differentiation—and by extension, identification for comprehensive and targeted support and improvement—for certain schools, such as: (1) Schools in which no grade level is tested on the assessments required by the ESEA under section 1111(b)(2)(B) (*e.g.,* P–2 schools); (2) schools with variant grade configurations (*e.g.,* K–12 schools); (3)

small schools that do not meet the State's n-size on any indicator even after averaging data across schools years or grades consistent with § 200.20; (4) schools that are designed to serve special populations, such as students receiving alternative programming in alternative educational settings; students living in local institutions for neglected or delinquent children, including juvenile justice facilities; students enrolled in State public schools for the deaf or blind; and recently arrived English learners enrolled in public schools for newcomer students; and (5) newly opened schools where multiple years of data are not available consistent with procedures for averaging school-level data described in § 200.20 for at least one indicator (*e.g.,* a high school that has not yet graduated its first cohort for students).

Comments: We received several comments from tribal organizations that recommended exempting schools from the requirement for annual meaningful differentiation in section 200.18 if they instruct students primarily in a Native American language and if the State does not provide an assessment in that Native American language; these commenters suggested such schools should be listed as ''undifferentiated.'' However, other tribal organizations supported the proposed regulations for a single statewide accountability system, particularly because over 90 percent of American Indian and Alaska Native students attend State-funded public schools, as opposed to schools funded by the BIE or private operators. For these public school students, one commenter noted, the statewide accountability systems, including indicators that measure student achievement, are especially important.

Another tribal organization raised concerns about a lack of accountability for schools served by the Bureau of Indian Education (BIE) and requested that separate accountability measures should apply to tribally-controlled schools, and that schools located on Indian lands should be funded and monitored directly by the Department rather than by States.

Discussion: While States have some flexibility to develop alternate methods for differentiating and identifying schools, as described previously, the ESEA, as amended by the ESSA, continues to require that all public schools in each State be held accountable through a single statewide system of annual differentiation, and States may not exempt any school entirely from annual meaningful differentiation or identification. This includes schools that primarily instruct students in a Native American language.

In addition, under section 8204(c)(1) of the ESEA, as amended by the ESSA, the Secretary of the Interior must use a negotiated rulemaking process to develop regulations pertaining to standards, assessments, and accountability, consistent with section 1111, for BIE-funded schools ''on a national, regional, or tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools.'' Given the specific rulemaking process required for schools funded by the BIE, we cannot address in these regulations the role of individual schools under the BIE accountability system. We do note, however, that section 8204(c)(2) permits a tribal governing body or school board of a BIE-funded school to waive, in part or in whole, the requirements that BIE establishes and to submit a proposal to the Secretary of the Interior for alternative standards, assessments, and an accountability system, consistent with section 1111, that takes into account the unique circumstances and needs of the school or schools and students served. The Secretary of the Interior, along with the Secretary of Education, must approve those alternative standards, assessments, and accountability system unless the Secretary of Education determines that they do not meet the requirements of section 1111.

With respect to the comment about the funding and monitoring of schools located on Indian lands, to the extent that the comment is referring to State-funded public schools, State funding and oversight are matters of State law and are outside the scope of these regulations.

Changes: None.

Comments: None.

Discussion: Each State must describe in its State plan how its system of annual meaningful differentiation meets all statutory and regulatory requirements, but in proposed § 200.18, multiple paragraphs referenced information that must be included in the State plan. To provide additional clarity for States, prevent the inadvertent omission of required information in a State plan, and ensure that required information is transparent for those preparing and reviewing State plan submissions, we are revising § 200.18 to combine all requirements related to information submitted on annual meaningful differentiation in the State plan in a single paragraph.

Changes: We have revised § 200.18(d)(1), and renumbered remaining paragraphs of § 200.18 accordingly, to include, in one paragraph, all information that each State must submit in its State Plan under section 1111 of the ESEA to describe how its system of annual meaningful differentiation meets the regulations.

Comments: While many commenters supported the provisions in § 200.18 regarding annual meaningful differentiation of schools, a few commenters recommended striking § 200.18 in its entirety, out of concern that the regulations are too prescriptive, punitive, test-driven, and unnecessary to clarify the statute.

Discussion: As discussed previously, the regulations are necessary and useful to clarify the requirements for annual meaningful differentiation and weighting of indicators. Further, we believe these regulations will help States in their efforts to support students and schools, consistent with the purpose of title I: ''to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.''

Changes: None.

Section 200.19 Identification of Schools

Comments: One commenter stated that the proposed regulations lack clarity regarding the terms used for the various groups of schools that States must identify for school improvement. As an example, the commenter noted that schools identified for additional targeted support are referenced as having either a chronically low-performing subgroup or a low-performing subgroup.

Discussion: The Department has made every effort to use consistent language throughout the regulations when referring to categories of identified schools. The examples cited by the commenter actually refer to two separate categories of schools. Schools with low-performing subgroups are schools identified for targeted support and improvement that also must receive additional targeted support under section 1111(d)(2)(C) of the ESEA, as amended by the ESSA; if they do not improve over time, then they are defined as chronically low-performing subgroup schools and must be identified for comprehensive support and improvement. For greater clarity regarding the types of schools that must be identified, the Department is revising the final regulations to include the chart below, which summarizes each category of schools that States must identify to meet the requirements in section

1111(c) and 1111(d) of the ESEA, as amended by the ESSA:

Types of schools	Description [22]	Statutory provision [23]	Regulatory provision	Timeline for identification	Initial year of identification
Category: Comprehensive Support and Improvement					
Lowest-Performing.	Lowest-performing five percent of schools in the State participating in Title I.	Section 1111 (c)(4)(D)(i)(I).	§ 200.19(a)(1)	At least once every three years.	2018–2019.
Low High School Graduation Rate.	Any public high school in the State with a four-year adjusted cohort graduation rate at or below 67 percent, or below a higher percentage selected by the State, over no more than three years.	Section 1111 (c)(4)(D)(i)(II).	§ 200.19(a)(2)	At least once every three years.	2018–2019.
Chronically Low-Performing Subgroup.	Any school participating in Title I that (a) was identified for targeted support and improvement because it had a subgroup of students performing at or below the performance of all students in the lowest-performing schools and (b) did not improve after implementing a targeted support and improvement plan over a State-determined number of years.	Section 1111 (c)(4)(D)(i)(III), 1111(d)(3)(A)(i)(II).	§ 200.19(a)(3)	At least once every three years.	State-determined.
Category: Targeted Support and Improvement					
Consistently Underperforming Subgroup.	Any school with one or more consistently underperforming subgroups.	Section 1111 (c)(4)(C)(iii), 1111(d)(2)(A)(i).	§ 200.19(b)(1), (c) ..	Annually	2019–2020.
Low-Performing Subgroup.	Any school in which one or more subgroups of students is performing at or below the performance of all students in the lowest-performing schools. These schools must receive additional targeted support under the law. If this type of school is a Title I school that does not improve after implementing a targeted support and improvement plan over a State-determined number of years, it becomes a school that has a chronically low-performing subgroup and is identified for comprehensive support and improvement.	Section 1111 (d)(2)(D).	§ 200.19(b)(2)	At least once every three years.	2018–2019.

Changes: We have revised § 200.19 to include a table that describes each category of school support and improvement, including each type of school within the category, and lists the related statutory and regulatory provisions.

Comments: Several commenters expressed concerns that the proposed regulations would not allow States to identify schools for support if they are eligible for, but do not receive, title I funds. Commenters believe this is inconsistent with current practice and would result in the identification of fewer high schools because most school districts run out of title I funds before awarding funds to high schools. A few commenters suggested that the Department allow States to identify the lowest-performing five percent of title I-eligible schools, rather than the lowest-performing five percent of title I-receiving schools. One commenter raised concerns that if a State did not identify any high schools for support and improvement because they did not receive title I funds, then high schools would not be eligible for funds under section 1003.

Discussion: We appreciate commenters' interest in ensuring that all low-performing high schools are identified and supported. However, under section 1111(c)(4)(D)(i)(I) of the ESEA, as amended by the ESSA, a State is limited to identifying only schools that receive title I funds when it identifies its lowest-performing five percent of title I schools for comprehensive support and improvement. On the other hand, States must identify any public high school with a graduation rate below 67 percent for comprehensive support and improvement and any school with subgroups that are consistently underperforming for targeted support and improvement, regardless of their title I status. Any school identified for comprehensive or targeted support and improvement that meets the definitions of those categories of schools under the statute is eligible for funds under section 1003 of the ESEA, as amended by the ESSA, regardless of whether the school receives other title I funds. Given these statutory requirements for States to identify and support high schools that do not receive title I funds, we do not believe that additional regulatory flexibility is appropriate or necessary.

Changes: None.

Comments: One commenter suggested the Department provide non-regulatory guidance on how title I funds can be used to support non-title I high schools identified for comprehensive support

[22] This chart provides a summary description only; please refer to the regulatory text for a complete description of the schools in these categories.

[23] Section numbers refer to sections of the ESEA, as amended by the ESSA.

because they have a graduation rate less than 67 percent.

Discussion: We appreciate the commenters' suggestion and will consider this recommendation for non-regulatory guidance. As described in the previous discussion section, a school non-title I high school identified for comprehensive support because it has a graduation rate of 67 percent or less is eligible for funds under section 1003 of the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter asked for clarity about whether a single school can be identified for comprehensive and targeted support and improvement simultaneously.

Discussion: It is possible that a school could meet the criteria to be identified for both comprehensive and targeted support and improvement. Given that the requirements for developing and implementing comprehensive and targeted support and improvement plans do not fully align, we are revising the regulations to clarify that States must identify any school that is not identified for comprehensive support and improvement under § 200.19(a), but that has a consistently underperforming subgroup or low-performing subgroup, for targeted support and improvement. We encourage States and LEAs to ensure that, for each school that is identified for comprehensive support and improvement but who has a consistently underperforming or low-performing subgroup, to ensure that the school's comprehensive improvement and support plan identifies the needs of all students and includes interventions designed to raise the achievement of all low-performing students.

Changes: We have revised § 200.19(b)(1)–(2) to clarify that any school identified for comprehensive support and improvement under § 200.19(a) need not also be identified for targeted support and improvement under § 200.19(b)(1) or (2).

Comments: One commenter suggested the Department eliminate any requirement to identify comprehensive support and improvement schools beyond those that are in the lowest-performing five percent of all title I schools in the State and any public high school in the State failing to graduate one-third or more of its students. The commenter also suggested that the Department eliminate the targeted support and improvement category.

Discussion: Section 1111(c)(4)(D) of the ESEA, as amended by the ESSA, requires that each State identify three types of schools for comprehensive support and improvement: Those that are the lowest-performing five percent of all title I schools, all public high schools failing to graduate one third or more of their students, and all title I schools with low-performing subgroups that were originally identified for targeted support and improvement but have not met the LEA-determined exit criteria after a State-determined number of years. Additionally, section 1111(d)(2)(A) requires States to identify schools with consistently underperforming subgroups for targeted support and improvement, and section 1111(d)(2)(C) requires identification of schools if a subgroup, on its own, is performing as poorly as students in the lowest-performing five percent of title I schools, *i.e.,* a low-performing subgroup. Given these statutory requirements, the Department declines to make changes in this area.

Changes: None.

Comments: One commenter suggested that the Department add a requirement that a school identified for comprehensive support and improvement must provide support through the Native American language of instruction to those students instructed primarily in a Native American language, and provide such support through the Native American language based in the structure and features of the language itself such that it does not limit the preservation or use of the Native American language.

Discussion: We appreciate the commenter's emphasis on ensuring that interventions in comprehensive support and improvement schools align with the unique characteristics and goals of schools that provide instruction primarily in a Native American language. We believe that, in general, the concerns of the commenter would be addressed through key components of the school improvement process, such as a needs assessment and consultation requirements, both of which could emphasize the need for instructional interventions to be delivered through the specific Native American language used in the school. We encourage States and districts to work with such schools to address the required components of the school improvement process, while also maintaining the core aspects of the Native Language instructional program.

We note that it may not be necessary for some interventions developed and implemented as part of a school's comprehensive or targeted support and improvement plan (*e.g.,* an early warning system aimed at curbing chronic absenteeism) to be delivered in a Native American language. The specific suggestion that the supports be provided to students in a particular language is beyond the scope of these regulatory provisions, which address comprehensive support and improvement for a school in general (see examples in § 200.21(d)(3)), rather than to students individually. Therefore, we decline to make the use of Native American language a blanket requirement for such interventions.

Changes: None.

Comments: One commenter requested that the Department require States to identify schools for comprehensive support and improvement every year.

Discussion: While the statute and proposed regulations provide States with the flexibility to identify schools for comprehensive support and improvement each year, section 1111(c)(4)(D)(i) of the ESEA, as amended by the ESSA, requires States to identify schools no less than once every three years. The change requested by the commenter would not be consistent with this statutory flexibility.

Changes: None.

Comments: Some commenters encouraged the Department to clarify that States may adopt or continue more rigorous systems for school and subgroup accountability than those required by the statute and regulations. For example, the commenters suggested clarifying that a State could identify all high schools with a single subgroup that has a graduation rate at or below 67 percent, rather than only schools where the all students group has a graduation rate at or below 67 percent. Additionally, one commenter suggested that the Department clarify that States can identify more than the lowest performing five percent of title I schools.

Discussion: We appreciate the commenters' interest in clarifying that States have additional flexibility to design and implement accountability systems that go beyond the minimum requirements of the ESEA, as amended by the ESSA, and corresponding regulations. For purposes of identifying schools to meet the Federal requirements for school identification and to determine eligibility for Federal funds, including school improvement funds under section 1003 of the ESEA, States must use the applicable statutory and regulatory definitions, and we believe the regulations should reflect these minimum requirements. States may go beyond these minimum requirements by identifying additional categories of schools, such as Warning Schools or Reward Schools. Likewise, they may identify for comprehensive or targeted support and improvement additional schools that do not meet the definitions for those categories of

schools, but any such additional schools would not be eligible to receive Federal funds—including school improvement funds under section 1003 of the ESEA—that are specifically for schools identified for comprehensive or targeted support and improvement, as defined in the statute. We believe that further clarification on this issue is more appropriate for non-regulatory guidance.

We recognize, however, that the language in the proposed regulations stating that a State's identification of schools for comprehensive support and improvement must include ''at a minimum'' the three types of schools specified in the statute and regulations, and similar language regarding the two types of schools specified in the statute and regulations for targeted support and improvement, may have created some confusion as to whether a State has authority to identify additional types of schools for comprehensive and targeted support and improvement, and thereby to make such additional schools eligible for funds that are to be provided specifically to schools identified for comprehensive or targeted support and improvement. To clarify this issue, we are removing the words ''at a minimum'' from those paragraphs of the final regulations.

Additionally, section 1111(c)(4)(D)(i)(I) of the ESEA, as amended by the ESSA, is clear that State must identify ''not less than'' the lowest-performing five percent of title I schools for comprehensive support. To clarify that this permits a State to identify more than the lowest-performing five percent of title I schools (*e.g.,* the bottom ten percent of title I schools or five percent of each of title I elementary, middle, and high schools), we have revised the regulatory language to include this statutory flexibility.

Changes: We have removed the phrase ''at a minimum'' from § 200.19(a) and (b). We have also revised § 200.19(a)(1) to include the phrase ''not less than'' in describing the lowest-performing schools identified for comprehensive support.

Lowest-Performing Schools

Comments: One commenter expressed support for the requirement to identify the lowest-performing five percent of schools, but another commenter opposed the implication of the requirement that a State could never have a system in which all schools were successful.

Discussion: The regulation requiring identification of the lowest-performing schools implements section 1111(c)(4)(D)(i)(I) of the ESEA, as amended by the ESSA, which requires that each State identify not less than its lowest-performing five percent of title I schools for comprehensive support and improvement.

Changes: None.

Comments: Several commenters raised concerns that proposed § 200.19(a)(1) would require each State to identify the lowest-performing five percent of schools at each of the elementary, middle, and high school levels for comprehensive support and improvement. Other commenters found this requirement inconsistent with section 1111(c)(4)(D)(i)(I) of the ESEA, which requires the identification of the lowest-performing five percent of title I schools in the State. One commenter specifically requested that States have flexibility to identify the lowest-performing schools across grade spans, while another commenter warned that such flexibility could result in not identifying any schools in a particular grade-level (if, for example, all of a State's elementary schools were high-performing but most middle schools were performing poorly).

Discussion: We agree with the commenters that the proposed requirements may have created confusion with respect to whether States were required to identify the lowest-performing five percent of title I schools at each of the elementary, middle, and high school levels. This was not our intent, and we are revising the final regulations to eliminate the reference to each grade span, although a State could choose to identify five percent of title I schools at each grade span. While we appreciate that a State could identify more schools in a particular grade span than another, we believe it is unlikely that a State would not identify any schools in a grade span and do not believe it is appropriate to require a State to identify schools in each grade span if it is otherwise identifying the lowest-performing five percent of all title I schools in the State.

Changes: We have revised § 200.19(a)(1) to clarify that each State must identify the lowest-performing five percent of its title I schools, without reference to particular grade spans.

Comments: Commenters raised concerns about the proposed requirement that States identify the lowest-performing five percent of all title I schools in the State based on each school's summative rating among all students. Some of these commenters opposed the requirement because they generally oppose the requirement to provide each school with a summative rating and, as a result, oppose the requirement that it be used for school identification. Another commenter questioned whether summative ratings will be precise enough to separate a school at the fifth percentile from a slightly higher ranked school. Other commenters suggested specific approaches or flexibilities related to identifying the lowest-performing five percent of schools, such as using school academic proficiency rates, a combination of assessment data and other measures, such as parent and climate surveys and graduation rates, methods similar to those used to identify priority schools under ESEA flexibility, or a combination of summative ratings and factors related to school capacity and district support.

Discussion: Section 1111(c)(4)(D) of the ESEA, as amended by the ESSA, requires States to identify schools for comprehensive support and improvement based on the State's system of annual meaningful differentiation, which includes multiple indicators beyond statewide assessment results. Moreover, as required under § 200.18(a)(4), a State's system of meaningful differentiation must result in a summative determination that is based on a school's performance on all indicators, but does not include other factors, such as district capacity or commitment. Therefore, a State cannot identify a school as among its lowest-performing schools for comprehensive support and improvement based on a single indicator, such as student performance on the statewide assessments, nor incorporate into such identification factors that are not indicators in its statewide accountability system. However, as noted previously, States have the ability to identify more than five percent of title I schools if the State determines such identification is appropriate and useful to ensure additional low-performing schools receive support. Further, as noted in the discussion on § 200.18, each State retains significant discretion to design its system of meaningful differentiation and may incorporate a wide range of academic and non-academic factors in the indicators that will be used for the providing a summative determination for each school and identification of the lowest-performing 5 percent of title I schools. We are also revising § 200.18(a)(4) to allow a State to use the summative determinations discussed in the statute (*i.e.,* comprehensive support and improvement, targeted support and improvement, not identified for support) and are making corresponding changes to § 200.19(a)(1) to incorporate this flexibility.

Changes: Consistent with the changes to § 200.18, we have revised

§ 200.19(a)(1) to require States to identify at least the bottom five percent of title I schools consistent with the summative determinations provided under § 200.18(a)(4).

Comments: One commenter suggested that once summative ratings were used to identify the bottom five percent of title I schools, teachers from the top five percent of schools should be sent to the bottom five percent of title I schools to help them improve.

Discussion: Under the ESEA, as amended by the ESSA, school districts are responsible for determining appropriate interventions in schools identified for comprehensive support and improvement.

Changes: None.

Comments: None.

Discussion: Under § 200.18 of the regulations, States must include the performance of all students in calculating a school's performance on each of the accountability indicators under § 200.14, as well as in calculating the school's summative determination. Therefore, it is unnecessary to refer to ''all students'' in § 200.19(a)(1), which requires States to identify the lowest-performing five percent of title I schools for comprehensive support and improvement.

Additionally, consistent with the existing regulations and practice across many States, § 200.20 allows a State to average school-level data across grades and across no more than three years in determining a school's performance for accountability purposes. Therefore, the Department is removing references in § 200.19(a)(1) to averaging summative determinations over no more than three years because, although States may use data that have been averaged over up to three years to calculate performance on indicators consistent with § 200.20, the determinations themselves are not averaged. For clarity, we are also removing other references to data averaging throughout § 200.19 because § 200.20 provides the full parameters under which States may average school-level data over school years and across grades.

Changes: We have revised § 200.19(a)(1) to: (1) Remove references to ''all students,'' and (2) remove references to averaging summative ratings (now summative determinations in the final regulations) over no more than three years. We have also removed a reference from data averaging in § 200.19(c)(2).

Low High School Graduation Rate

Comments: Some commenters opposed the 67 percent graduation rate threshold for identification of high schools for comprehensive support and improvement, particularly if applied to dropout recovery high schools. Another commenter recommended identifying for comprehensive support and improvement the lowest 10 percent of high schools based on graduation rates, similar to the requirement that States identify the lowest-performing five percent of all title I schools.

Discussion: The regulations are consistent with section 1111(c)(4)(D)(i)(II) of the ESEA, as amended by the ESSA, which requires States to identify all public high schools in the State that fail to graduate one-third or more of their students. Section 200.18(d)(1)(iii), which contains provisions that were included in proposed § 299.17, allows a State to use a differentiated accountability approach for schools that serve special populations, including dropout recovery high schools.

Changes: None.

Comments: A number of commenters supported the Department's proposal to require States to consider only the four-year adjusted cohort graduation rate in identifying low graduation rate high schools for comprehensive support and improvement and to permit a State to set a threshold higher than 67 percent in identifying such schools. One commenter suggested that the Department clarify that the threshold for such determination was inclusive of schools with a graduation rate of 67 percent, rather than just schools with graduation rates below 67 percent, and that this criterion applies to all public high schools in the State, not just those that receive funds under title I of the ESEA.

Discussion: We appreciate the commenters' support for the exclusive use of the four-year adjusted cohort graduation rate in identifying low graduation rate high schools and agree that a school with a graduation rate of 67 percent must be identified, consistent with the statutory requirement that the State identify each public high school that fails to graduate one third or more of its students; we are revising the regulations to clarify this point. However, we do not believe it is necessary to further clarify that States must identify all public low graduation rate high schools, not just schools receiving title I funds, for comprehensive support and improvement, given that the statute and regulations are clear on this point.

Changes: We have revised § 200.19(a)(2) to specify that a high school with a four-year adjusted cohort graduation rate at or below 67 percent must be identified for comprehensive support and improvement.

Comments: Several commenters suggested that the regulations be modified to allow States to identify low graduation rate high schools based on the four-year adjusted cohort graduation rate, an extended-year adjusted cohort graduation rate, or a combination of these rates. Similarly, one commenter suggested that a State be allowed to use an extended-year adjusted cohort graduation rate for this purpose, provided the State sets a higher graduation rate threshold (*e.g.,* 70 percent) for identifying schools based on an extended-year rate.

Some commenters believe that an extended-year adjusted cohort graduation rate is a more appropriate measure because it would recognize the importance of serving students who may take longer than four years to graduate. Many of these commenters suggested that the use of the four-year adjusted cohort graduation rate only to identify schools is inconsistent with the inclusion, at the State's discretion, of extended-year adjusted cohort graduation rates in the calculation of long-term goals, measurements of interim progress, and indicators under section 1111(c)(4)(A)(i)(I)(bb)(BB) and 1111(c)(4)(B)(iii)(II) of the ESEA and proposed §§ 200.13–200.14. Some of these commenters also stated that the statute's silence on the rate to be used for purposes of identifying schools should be interpreted as providing States flexibility in this area.

Commenters were particularly concerned that identifying schools based solely on the four-year adjusted cohort graduation rate would discourage schools from serving over-age or under-credited youth who may take longer than four years to graduate, is inconsistent with many States' provision of a Free Appropriate Public Education (FAPE) until a student turns 21, and would inappropriately identify alternative schools such as dropout recovery schools, schools for students in neglected or delinquent facilities, and schools for recently arrived immigrants. One commenter stated the proposed regulations were inconsistent with title IV of the ESEA, which creates a priority for charter schools to serve students at risk of dropping out or who have dropped out of school (Section 4303(g)(2)(E) of the ESEA) and with the Workforce Innovation and Opportunity Act (WIOA), which encourages schools and States to reengage out of school youth and provide a high school diploma as a preferred credential for those aged 16 to 24. Another commenter recommended that the Department

allow dropout recovery schools to collect and report one-year graduation rates in place of the four-year and extended-year adjusted cohort graduation rates because using even the extended-year rate would over-identify such schools.

A few commenters noted that the Department previously recognized the need for flexibility under its 2008 title I regulations by allowing States to use a four-year adjusted cohort rate and an extended-year adjusted cohort graduation rate in calculating AYP for high schools. Other commenters suggested that a more nuanced approach that allowed a State to use an extended-year rate for certain alternative education programs would be appropriate. One commenter noted that, under the proposed regulations, nearly all of the alternative high schools in its State would be identified.

Discussion: We agree with commenters that it is vital for States, LEAs, and schools to serve students who have been traditionally underserved because of their age or lack of credits, and that programs and priorities like those in title IV of the ESEA and the WIOA are essential to support these students. However, we also seek to ensure that States identify and support high schools that fail to graduate one-third of their students, as required by section 1111(c)(4)(D)(i)(II) of the ESEA, as amended by the ESSA. The four-year adjusted cohort graduation rate is the primary measure of graduation rates within the statewide accountability system, including the Graduation Rate indicator, long-term goals, and measurements of interim progress. Therefore, identifying low graduation rate high schools using the four-year adjusted cohort graduation rate is critical to ensuring that when schools fail to graduate one-third of their students, they are identified and receive appropriate and meaningful supports so that each of their students can graduate. Indeed, using the four-year adjusted cohort graduation rate is essential to helping ensure that low graduation rate high schools are identified and receive appropriate and meaningful supports, even if a State establishes a graduation rate threshold that is higher than 67 percent.

However, we recognize that for a small subset of schools that serve unique populations of students, an extended-year rate may be a more appropriate indicator of a school's performance, and we have revised § 200.18(d)(1)(iii) to clarify that States have flexibility to develop and implement alternate accountability methods—which may include the use of extended-year graduation rates—for schools designed to serve special student populations, including alternative schools, dropout recovery programs, and schools for neglected and delinquent youth. Under this provision, a State could, for example, propose through its State plan to use a five- or six-year adjusted cohort graduation rate to determine if an alternative or dropout recovery school's graduation rate was 67 percent or less for the purposes of identifying those schools.

Given this flexibility, the Department does not believe that requiring States to use the four-year adjusted cohort graduation rate will result in the inappropriate or over-identification of schools that primarily serve special populations of students.

Further, in response to commenters who noted the statute's silence on the particular rate to use for identification of low graduation rate high schools, given the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision. Moreover, we do not agree that Congress' silence on which graduation rate is to be used for purposes of identifying schools precludes the Department from clarifying the requirement. To the contrary, given the specific references to extended-year rates in the statutory provisions regarding goals, measurements of interim progress, and accountability indicators, it seems clear that if Congress intended to permit States to use an extended-year rate for purposes of identifying schools, it would have specified. Accordingly, we believe that the clarification in § 200.19(a)(2) that identification of low graduation rate high schools is to be based on the four-year adjusted cohort graduation rate falls squarely within the scope of section 1111(c) of the ESEA, as amended by the ESSA, consistent with section 1111(e) and is reasonably necessary to ensure compliance with the requirements in section 1111(c)(4)(D)(i)(II) and, as such, constitutes an appropriate exercise of the Department's rulemaking authority.

Changes: None.

Comments: Some commenters suggested that the Department allow States, in identifying low graduation rate high schools, to use a non-cohort graduation rate or to include students who attain an alternate diploma in determining if a school's graduation rate was 67 percent or less. Another commenter requested that the Department allow States to include students who have met all the terms of their IEPs as graduates.

Discussion: While we understand the commenters' interest in recognizing the support schools provide to all students, regardless of whether those students receive a regular high school diploma, sections 8101(23)(A)(ii) and 8101(25)(A)(ii) of the ESEA and related regulations in § 200.34 already explicitly allow States to include students with the most significant cognitive disabilities who take an alternate assessment based on alternative academic achievement standards, meet certain other criteria, and receive an alternate diploma, in the State's adjusted cohort graduation rate or rates. The statute expressly prohibits States from including students that earn a high school equivalency diploma or other alternate diploma in the State's adjusted cohort graduation rate or rates. Therefore, we decline to allow States to use measures other than the four-year or extended-year adjusted cohort graduation rates, calculated consistently with the statutory and regulatory requirements, to identify high schools for the purposes of comprehensive support and improvement.

Changes: None.

Chronically Low-Performing Subgroup

Comments: Some commenters asserted that the Department created a third category of comprehensive support schools, those with chronically low-performing subgroups, that was not in the statute. One commenter proposed making it clear that it was up to States to include this category of schools through the development of a State plan. Another commenter noted the statute uses the term consistently underperforming subgroup, but does not refer to chronically low-performing subgroups.

One commenter suggested that the Department reconsider its definition of chronically low-performing subgroup schools and move this definition into non-regulatory guidance. The commenter is concerned that this requirement, in conjunction with other provisions in this section, will result in very high rates of identification of schools for comprehensive support and improvement.

Discussion: The chart at the beginning of this section provides a reference guide on the types of schools that must be identified for comprehensive support and improvement or targeted support and improvement under the law. With respect to ''chronically low-performing

subgroups,'' that term is not specifically used in the statute but is the term we are using in the regulations to identify a category of schools described in two sections of the ESEA. Section 1111(d)(2)(C) of the ESEA, as amended by the ESSA, requires each State to identify schools with low-performing subgroups (*i.e.,* those with subgroups who, on their own, are performing as poorly as the lowest-performing five percent of all title I schools) for targeted support and improvement and these schools also must receive additional targeted support. Section 1111(c)(4)(D)(i)(III) then states that if these schools do not improve after implementing a targeted support and improvement plan over a number of years, they must be identified for comprehensive support and improvement. When these schools are first identified for targeted support and improvement, they are referred to in the regulations as schools with ''low-performing subgroups''; however, if they do not improve over a State-determined number of years, they must be identified for comprehensive support and improvement. The Department is referring to these schools as schools with ''chronically low-performing subgroups'' for the sake of clarity because the statute does not provide a specific term for them and a term is needed to clarify for States their statutory obligations with respect to these schools.

Changes: None.

Comments: Several commenters opposed the proposed requirement that States identify for comprehensive support and improvement any title I school with a low-performing subgroup that has not improved after implementing a targeted support and improvement plan over no more than three years. In particular, commenters believed that the proposed requirement would force States to set a three-year timeline for the exit criteria for a school with a low-performing subgroup and would likely result in the over-identification of schools with chronically low-performing subgroups. The commenters referred to section 1111(d)(3)(A)(i)(II) of the ESEA, as amended by the ESSA, which requires States to set exit criteria for schools with low-performing subgroups and to determine the number of years by which, if such a school is a title I school that has not met the exit criteria, it must be identified for comprehensive support and improvement. One commenter suggested, in addition to modifying the regulations to reflect that the State determine the number of years before a school with a low performing subgroup be identified for comprehensive support, that States publish a list, at least once every three years, of the schools with low-performing subgroups that are identified for targeted support and improvement that also must receive additional targeted support because they have one or more low-performing subgroups that are still identified as such because they have not yet met the State's exit criteria. Another commenter stated that three years was too long to permit a school to languish as a school receiving additional targeted support before it is identified for comprehensive support, and would result in students in such schools not receiving timely support.

Discussion: Section 1111(c)(4)(D)(i)(III) requires States to identify schools with chronically low-performing subgroups for comprehensive support and improvement at least once every three years. Section 1111(d)(3)(A)(i)(II) authorizes States to establish statewide exit criteria for such schools. Under this same section, if those criteria are not satisfied in a State-determined number of years, those schools that receive title I funds must be identified for comprehensive support and improvement. The final regulations reflect these statutory requirements. Within these requirements, States still have discretion regarding the timelines and exit criteria. Thus, we encourage each State to carefully consider the various timelines for school identification it must implement to meet its statutory and regulatory obligations. Finally, we do not believe that an additional reporting requirement is necessary as States and LEAs must annually publish State and local report cards that include information about schools identified for support and improvement, including those with low-performing or chronically low-performing subgroups.

Changes: The Department has revised § 200.19(a)(3) to clarify that States determine the number of years over which a school with a low-performing subgroup identified for targeted support under § 200.19(b)(2) may implement a targeted support plan before the State must determine that the school has not met the State's exit criteria and, if it receives title I funds, identify the school for comprehensive support and improvement. We have made a corresponding change to § 200.22(f)(2).

Comments: One commenter opposed the requirement that a school be identified for comprehensive support and improvement if a single subgroup's low performance would lead to such identification. In particular, the commenter was concerned that requiring a school with a single low-performing subgroup to be identified for comprehensive support and improvement would dilute State support services and funding, diminishing support for schools with greater needs.

Discussion: The identification of schools with chronically low-performing subgroups for comprehensive support and improvement if they do not improve after implementing a targeted support and improvement plan over a State-determined number of years is required by section 1111(c)(4)(D)(i)(III) of the ESEA, as amended by the ESSA, and reflects the key focus of title I on closing educational achievement gaps.

Changes: None.

Targeted Support and Improvement, in General

Comments: One commenter suggested that the Department amend proposed § 200.19(b) to encourage States to consider third-grade reading scores as one measure that can trigger the need for targeted support.

Discussion: The Department recognizes that there are a wide range of measures that States may choose to incorporate into their systems of annual meaningful differentiation of schools, including for purposes of identifying schools for targeted support and improvement, but we believe the inclusion of any additional measures should be left to State discretion.

Changes: None.

Comments: Several commenters recommended that the Department remove proposed § 200.19(b) and allow States to determine the parameters for identifying schools for targeted support and improvement. Some of these commenters argued that the proposed regulations would result in the identification of more schools than required by the statute. One commenter was concerned that the number of schools identified within this category would overwhelm State title I staff that support school improvement, leading to inadequate support for such schools. Another commenter noted that the law requires identification of the lowest-performing five percent of title I schools, but failed to recognize the law also requires identifying schools for targeted support, and said that the proposed regulations require school identification based on subgroup status, which would result in States exceeding what the commenter believed to be a statutory limit of five percent. One commenter asserted that proposed § 200.19(b) violated section

1111(e)(1)(B)(iii)(V) of the ESEA because it specifies requirements for differentiating schools for targeted support and improvement.

Discussion: Section 1111(c)(4)(C)(iii) and section 1111(d)(2)(A) of the ESEA, as amended by the ESSA, require a State to use its method for annual meaningful differentiation, based on all indicators, to identify any public school in which one or more subgroups of students is consistently underperforming, so that the LEA for the school can ensure that the school develops a targeted support and improvement plan. Section 1111(d)(2)(D) further requires that, if a subgroup of students in a school, on its own, has performed as poorly as all students in the lowest-performing five percent of title I schools that have been identified for comprehensive support and improvement, the school must be identified for targeted support and improvement and implement additional targeted supports, as described in section 1111(d)(2)(C). Given these explicit statutory requirements regarding the schools that must be identified for targeted support and improvement, which are incorporated into § 200.19(b), we disagree with commenters who asserted that the requirements in this regulatory provision are not explicitly authorized by the statute. Further, we disagree with comments asserting that § 200.19(b) is inconsistent with section 1111(e)(1)(B)(iii)(V) of the ESEA; § 200.19(b) does not prescribe a specific methodology to meaningfully differentiate or identify schools. Rather, it simply clarifies the two types of schools that the statute requires to be identified for targeted support and improvement. States retain flexibility to determine precisely how they will identify these schools. For example, States have discretion to determine how they will identify schools with subgroups that are performing as poorly as schools that are in the lowest-performing five percent of title I schools. Although we appreciate the commenters' concerns about the limited capacity of States and LEAs to support all identified schools, because the requirements regarding which schools to identify for targeted support and improvement are statutory (section 1111(d)(2)(A) and (D) of the ESEA), we decline to make the suggested changes. However, we recognize that language in § 200.19(b)(1) allowing States to identify, at the State's discretion, schools that miss the 95 percent participation rate requirement for all students or a subgroup of students, within the category of schools with consistently underperforming subgroups identified for targeted support, conflated a statutory requirement and regulatory flexibility. While, under § 200.15(b)(2)(iii), States retain the option to identify such schools for targeted support and to require these schools to implement the requirements under § 200.22, we are removing the reference to these schools in § 200.19(b)(1) because schools with low participation rates may not necessarily meet the State's definition of consistently underperforming subgroups.

Changes: We have removed language in § 200.19(b)(1) that referred to schools identified under § 200.15(b)(2)(iii).

Low-Performing Subgroup

Comments: One commenter was concerned that the requirement to identify schools with subgroups performing as poorly as the lowest-performing five percent of title I schools would require States to generate summative ratings for individual subgroups of students. The commenter noted that under ESEA flexibility, the commenter's State identified the lowest-achieving five percent of schools solely on the basis of academic proficiency rates of the all students group. Another commenter noted that the statute refers to subgroups performing as low as the lowest-performing five percent of title I schools, but does not require that States look at the results for the all students group or use a summative rating in identifying schools.

Discussion: We understand the commenters' concern that a State may need to undertake additional analysis at the subgroup level to identify when an individual subgroup is performing as poorly as students in the lowest-performing five percent of title I schools. The statute requires that States identify schools based on its system of annual meaningful differentiation which relies on multiple measures; therefore, an approach that only considered academic proficiency rates would be inconsistent with the ESEA, as amended by the ESSA. We generally agree with the commenters that States may take different approaches to identify a school with at least one subgroup that is as low performing as the lowest-performing five percent of title I schools, but section 1111(d)(2)(C) requires that a State identify schools with low-performing subgroups based on the same methodology it uses to identify the lowest-performing five percent of title I schools. We are revising the regulations to clarify that States must use the same approach to identify schools with low-performing subgroups as they do to identify the lowest-performing five percent of all title I schools.

The regulations do not require reporting of subgroup-specific summative determinations. However, they do require a consistent approach in order to ensure that States are meeting the requirement in section 1111(d)(2)(C) of the ESEA, as amended by the ESSA, to identify each school with an individual subgroup whose performance on its own would result in the school's identification in the lowest-performing five percent of title I schools.

Changes: We have revised § 200.19(b)(2) to remove the requirement that a State compare each subgroup's performance to the summative rating (now summative determination in the final regulations) of all students in the lowest-performing five percent of title I schools in order to identify schools with low-performing subgroups. Instead, States must use the same methodology they use to identify the lowest-performing five percent of title I schools under § 200.19(a)(1) to identify schools with low-performing subgroups.

Comments: One commenter stated that the proposed regulations helped clarify the statutory requirements around identifying schools for targeted support and improvement and additional targeted support, but encouraged the Department to provide States with additional flexibility in identifying such schools. A few commenters objected to the Department's proposed definition of low-performing subgroups. They said the proposed definition ignores statutory provisions that limit this group of schools to a subset of those identified for targeted support and improvement because they also include consistently underperforming subgroups. Other commenters suggested that the requirement to separately identify schools for targeted support and improvement and additional targeted support is inconsistent with the statute. Some commenters believed that the statute does not contain the requirement for two separate sets of schools, and that the proposed requirements require separate identification on separate timelines, adding significant complexity to accountability systems.

Discussion: Section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, requires each State to annually identify schools with consistently underperforming subgroups for targeted support and improvement. Separately, section 1111(d)(2)(C) requires each State to identify for targeted support and improvement schools with any subgroup of students that, on its own,

would have resulted in a school's identification as one of the lowest-performing five percent of title I schools in the State that are identified for comprehensive support and improvement. These schools must receive additional targeted support under the law and are described as schools with low-performing subgroups in the regulations. We, therefore, believe that these requirements are wholly consistent with the identification requirements and methodologies specified in the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter expressed concern that the proposed requirements for identifying schools with low-performing subgroups that receive targeted support and improvement, as well as additional targeted support, might not be appropriate for high schools, because most high schools do not receive title I funds and, therefore, the lowest-performing five percent of title I schools may not contain any high schools. The commenter recommended that, for the purpose of identifying schools with low-performing subgroups at the high school level, States be permitted to measure subgroup performance against the lowest-performing five percent of all high schools or high-poverty high schools, rather than comparing performance only to those high schools identified in the lowest-performing five percent of schools that receive title I funds.

Discussion: We appreciate the commenter's concern that there may be few high schools identified within a State's lowest-performing five percent of title I schools, but section 1111(d)(2)(C) expressly requires that a State identify for targeted support and improvement any school with a subgroup that, on its own, would have resulted in the school's identification as a school in the lowest-performing five percent of title I schools. For this reason, the Department declines to make the suggested change.

Changes: None.

Comments: One commenter was unclear about whether, in identifying schools with low-performing subgroups, the State should be comparing a subgroup's performance to the performance of the all students group on individual accountability indicators, or on the indicators collectively. The commenter suggested the Department clarify the requirements for school identification broadly, but particularly in this area.

Discussion: We appreciate the commenter's request for clarification. We are revising § 200.19(b)(2) to specify that schools with low-performing subgroups must be identified using all indicators and the same methodology the State uses to identify its lowest-performing five percent of title I schools. We will consider providing further clarification in non-regulatory guidance to support States in identifying each group of schools, consistent with applicable statutory and regulatory requirements.

Changes: We have revised § 200.19(b)(2) to clarify that schools with low-performing subgroups are identified by applying the State's methodology for identifying its lowest-performing schools to individual subgroups.

Comments: Several commenters expressed concern that the lack of a cap on the number of schools that could be identified as having low-performing subgroups that receive targeted support and improvement, as well as additional targeted support, may result in exceeding a State's capacity to support effective school improvement or hindering efforts to create robust statewide systems of support that are tailored to local needs and goals. Some commenters suggested capping the number of schools that could be identified for targeted support and improvement at five to ten percent of title I schools.

Discussion: Under the regulations, as under the statute, States have flexibility to design their systems for annual meaningful differentiation in a way that takes into account the requirement to address the needs of low-performing subgroups as well as State capacity to support meaningful and effective school improvement. Given that the ESEA, as amended by the ESSA, requires identification of all schools that fall within the various identification categories, we do not believe that providing a cap on the number or percentage of schools that are identified for targeted support and improvement, as well as additional targeted support, would be consistent with the statute.

Changes: None.

Comments: One commenter expressed concern that setting a threshold at the lowest-performing five percent of title I schools to identify schools with low-performing subgroups for targeted support and improvement that also receive additional targeted support could be detrimental to students with disabilities because it might not require a generally high-performing school to address the needs of a particular subgroup until its performance dropped to the level of the lowest-performing five percent of title I schools.

Discussion: We believe that the concerns of the commenter are addressed in significant part by the requirements that States identify any schools with a consistently underperforming subgroup and schools with a low-performing subgroup for targeted support and improvement. This requirement will help ensure that any school in which the students with disabilities subgroup is underperforming receives support even if the subgroup is not performing as poorly as the lowest-performing five percent of title I schools.

Changes: None.

Methodology To Identify Consistently Underperforming Subgroups

Comments: Many commenters supported proposed § 200.19(c)(1), which requires States to consider each subgroup's performance over no more than two years in identifying schools with consistently underperforming subgroups for targeted support and improvement, because the regulation would ensure prompt recognition of underperforming subgroups so that students in those subgroups receive timely and appropriate supports to improve student outcomes, particularly because many of these subgroups have been historically underserved. However, many commenters opposed two years as an arbitrary timeline for identifying consistently underperforming subgroups. Others stated that the Department was exceeding its legal authority, with some of these commenters pointing specifically to section 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, which provides that nothing in the ESEA authorizes or permits the Department to prescribe the specific methodology used by States to meaningfully differentiate or identify schools under title I, part A. Some of these commenters noted that identifying schools with a single subgroup underperforming for only two years would result in the over-identification of schools, replicate the identification of schools under NCLB, and overstretch the capacity of States and districts to support identified schools. One commenter also noted that using just two years of data could increase the likelihood of misidentification because the State would not be able to ensure that the data used was valid and reliable. These commenters generally suggested that the Department remove all specific timeline considerations from the requirements.

As an alternative, one commenter suggested that a State be permitted to identify schools based on whether an individual subgroup had been low-performing on the majority of current year indicators or demonstrated low

levels of performance on the same indicator over three years, consistent with the flexibility for States to average a school's data over three years under proposed § 200.20. One other commenter suggested requiring a State to consider at least three years of data in identifying schools with consistently underperforming subgroups, while another suggested allowing a State to determine its own timeline of no more than four years, consistent with other requirements to identify schools and evaluate a school's performance on relevant exit criteria after no more than four years.

Discussion: The Department appreciates support from commenters who agreed that identifying schools with consistently underperforming subgroups based on two years of data is essential to ensuring prompt recognition of, and support for, such subgroups of students. We believe that this benefit, which is consistent with the focus of title I on closing achievement gaps, outweighs the risk of over-identifying schools, particularly because a longer timeline could permit entire cohorts of low-performing students to exit a school before the school is identified for targeted support and improvement. However, we appreciate that a State may, due to the specific design of the State's accountability system, require flexibility in order to consider the performance of subgroups of students over more than two years. We, therefore, have revised the regulations to permit a State to consider student performance over more than two years, in certain circumstances. Specifically, to ensure that students in subgroups that are underperforming in schools that have not yet been identified for targeted support and improvement will receive support and that a State will meet the requirement in section 1111(c)(4)(A)(i)(III) of the ESEA, as amended by the ESSA, we are revising § 200.19(c)(1) to require that a State that proposes to use a longer timeframe demonstrate how the longer timeframe will better support low-performing subgroups of students to make significant progress in achieving long-term goals and measurements of interim progress, in order to close statewide proficiency and graduation rate gaps. In response to commenters who believe that provisions in § 200.19(c)(1) were not explicitly authorized in the statutory text, these regulations are being issued in accordance with the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and need not be specifically authorized by the statutory text. Further, issuing this requirement is a proper exercise of the Department's rulemaking authority as revised § 200.19(c)(1) falls squarely within the scope of, and is necessary to reasonably ensure compliance with section 1111(c)(4), which requires statewide accountability systems to be designed to improve student academic achievement and school success, as well as with the purpose of title I of the ESEA, to provide all children significant opportunity to receive a high-quality education and to close educational achievement gaps. For these reasons, the regulation does not violate section 1111(e) of the ESEA, as amended by the ESSA. Moreover, we do not agree that proposed or revised § 200.19(c)(1) is inconsistent with section 1111(e)(1)(B)(iii)(V) because the regulation does not require the State to use a specific methodology in identifying schools with consistently underperforming subgroups. More specifically, revised § 200.19(c)(1) permits a State to consider subgroup performance over a longer timeframe if it makes the required demonstration.

Changes: Section 200.19(c)(1) has been revised to allow a State, in order to identify schools with one or more consistently underperforming subgroups, to consider a school's performance among each subgroup of students in the school over more than two years, if the State demonstrates that a longer timeframe will better support low-performing subgroups of students to make significant progress in achieving long-term goals and measurements of interim progress in order to close statewide proficiency and graduation rate gaps, consistent with section 1111(c)(4)(A)(i)(III) of the Act and § 200.13.

Comments: A few commenters supported the proposed definitions, including the option for a State-determined definition, of consistently underperforming subgroups under § 200.19(c)(3). Some commenters recommended removing all of the proposed definitions in § 200.19(c)(3) because the Department does not have the authority to require States to choose one of these definitions. Others suggested that the Department make it clear that the proposed definitions are optional. These commenters generally cited section 1111(c)(4)(C)(iii) of the ESEA, as amended by the ESSA, which allows a State to determine what constitutes consistent underperformance, and one commenter cited section 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, which provides that nothing in the ESEA authorizes the Secretary to prescribe the specific methodology States use to meaningfully differentiate schools.

Discussion: The Department's regulations provide States with a number of options for identifying schools with consistently underperforming subgroups of students in a way that promotes equity and ensures compliance with one of the stated purposes of title I—to close educational achievement gaps—as well as with the requirement for accountability systems to be designed to improve student academic achievement and school success. The regulations allow a State to propose its own definition of consistently underperforming subgroups, so long as that definition considers each school's performance among each subgroup of students and is based on all the indicators used for annual meaningful differentiation, consistent with the weighting requirements for such indicators. As such, the regulation is a proper exercise of the Department's rulemaking authority (*see* further discussion under the heading *Cross-Cutting Issues*). We do not agree that § 200.19(c)(3) is inconsistent with section 1111(c)(4)(C)(iii) or 1111(e)(1)(B)(iii)(V) of the ESEA, as amended by the ESSA, because the regulation does not require the State to use a specific methodology in identifying schools with consistently underperforming subgroups.

However, in reviewing the comments, the Department has determined that some of the definitions proposed in § 200.19(c)(3) were unclear or inconsistent with the proposed requirement in § 200.19(c)(2) to consider each indicator used for annual meaningful differentiation. Accordingly, we are revising § 200.19(c)(2)–(3) for clarity to ensure that: (1) Each State's methodology to identify schools with a consistently underperforming subgroup must be based on all indicators a State uses for annual meaningful differentiation; and (2) States defining consistently underperforming subgroups on the basis of long-term goals or measurements of interim progress also consider indicators for which the State is not required to establish goals or measurements of interim progress. In this way, States defining a consistently underperforming subgroup on the basis of its long-term goals and indicators can, for example, develop a methodology that considers all goals and indicators, even if identification for targeted support and improvement is made only on the basis of a single goal or indicator.

Changes: We have revised § 200.19(c)(2)–(3) to clarify that all definitions of consistently

underperforming subgroups must be based on all indicators in the accountability system, so that a State's methodology examines a school's performance across all indicators, even if a subgroup's performance against the State's measurements of interim progress and long-term goals or performance on a single indicator is sufficient to trigger identification of the school for targeted support and improvement.

Comments: Several commenters specifically opposed the options for defining consistently underperforming subgroups of students in proposed § 200.19(c)(3)(ii)–(iv), because States would be able to use a definition that includes a relative threshold for identification rather than an absolute standard and, consequently, only schools with the very lowest-performing subgroups would be identified.

Discussion: We appreciate the commenters' concern that the use of a relative measure may narrow the definition of consistently underperforming subgroups depending on the range of performance across measures within a State. Therefore, while we are retaining a State's flexibility to propose a State-determined definition, we are removing the proposed options for identifying consistently underperforming subgroups of students that included relative measures, such as the size of performance gaps between the subgroup and State averages.

Changes: We have removed the definitions in proposed § 200.19(c)(ii) through (iv) of the final regulations.

Comments: Many commenters suggested requiring all States to consider a subgroup's performance against the State's long-term goals and measurements of interim progress, as described under 200.19(c)(3)(i), in determining whether a subgroup is consistently underperforming.

Discussion: Sections 1111(c)(4)(C)(iii) and 1111(d)(2)(A) of the ESEA, as amended by the ESSA, require that States consider a subgroup's performance on all of the indicators in identifying schools with consistently underperforming subgroups for targeted support and improvement. Because only two of these indicators—the Academic Achievement indicator and the Graduation Rate indicator—must be based on a State's long term goals and measurements of interim progress, a methodology for identifying consistently underperforming subgroups that looked only at long-term goals or measurements of interim progress would not be consistent with the statute.

Changes: None.

Comments: One commenter suggested that the Department provide States with two additional options for identifying consistently underperforming subgroups: (1) Comparing a subgroup's performance against the average performance among all students, or the highest performing subgroup, in the school, and (2) comparing a subgroup's performance against the all students group, or the highest performing subgroup, in the LEA. The commenter also recommended that these additional options be used in tandem with a method based on an absolute measure, such as a subgroup's performance against a State's long-term goals and measurements of interim progress.

Discussion: We appreciate the commenter's suggestion and believe that a State could propose either of the options suggested by the commenter under final § 200.19(c)(3)(ii) so long as its proposal also met the requirements of 200.19(c)(1)–(2). A State could also propose to use one of these options in concert with a subgroup's performance against a State's long-term goals and measurements of interim progress. Because these approaches could already be proposed by a State as part of a State-determined definition of consistently underperforming subgroup, we decline to add these specific options to the regulations.

Changes: None.

Comments: While a few commenters recommended that the Department remove the requirement under proposed § 200.19(c)(2) regarding the use of indicators, other commenters asked the Department to clarify that States must consider a subgroup's performance on each indicator, including indicators of School Quality or Student Success, in determining which schools have consistently underperforming subgroups. Specifically, commenters were concerned that a State could consider performance only on a single indicator, such as Academic Achievement, but not other indicators in identifying schools with consistently underperforming subgroups.

Discussion: As previously discussed in the second summary of changes in the ''Methodology to Identify Consistently Underperforming Subgroups'', the Department has modified the regulations to clarify that a State must establish a definition of consistently underperforming subgroups that is based on all of the indicators, and that a school need not be underperforming on every indicator in order to be identified for targeted support and improvement. In other words, although a State's definition must examine a subgroup's performance on all indicators, a school may be identified based on having a subgroup that is underperforming on any one (or more) of those indicators. For example, although a State cannot systematically look only at each subgroup's performance on the Academic Achievement indicator to identify schools with low-performing subgroups (it must look at performance on all the indicators under § 200.14), it may identify an individual school for targeted support and improvement if a subgroup in that school is underperforming on the Academic Achievement indicator. We appreciate the commenters' concern that this requirement was not sufficiently clear in the proposed regulations.

Changes: We have revised § 200.19(c)(2)–(3) to clarify that all definitions of consistently underperforming subgroups must be based on all indicators in the accountability system, such that a State's methodology examines performance across all indicators, even if a subgroup's performance against the State's measurements of interim progress and long-term goals or low performance on a single indicator is sufficient to trigger identification of the school for targeted support and improvement.

Comments: A few commenters suggested that the Department require a State's definition of consistently underperforming subgroups to result in the identification of more schools for targeted support and improvement than the State identifies for targeted support and improvement due to low-performing subgroups.

Discussion: The statute requires each State to identify two categories of schools—those with consistently underperforming subgroups for targeted support and improvement and those with low-performing subgroups for targeted support and improvement that must also receive additional targeted support. We believe requiring one group to be larger than the other would be arbitrary and inconsistent with the requirements to identify all schools that meet the applicable definitions. Consequently, we decline to set parameters around the number of schools that must be identified in either category.

Changes: None.

Comments: One commenter suggested requiring that a State's method for identifying consistently underperforming subgroups be understandable by all stakeholders to promote transparency.

Discussion: We agree that it is important for stakeholders, including schools, educators, and parents to understand a State's methodology for identifying consistently underperforming subgroups. In its State plan and in the description of its system of annual meaningful differentiation on its State report card under § 200.30, each State must describe its methodology for identifying schools with consistently underperforming subgroups. Therefore, we decline to add an additional consultation or reporting requirement.

Changes: None.

Timeline

Comments: One commenter supported the proposed requirements in § 200.19(d)(1) that States must identify: (1) Schools for comprehensive support and improvement at least once every three years, beginning with identification for the 2017–2018 school year; (2) schools with one or more consistently underperforming subgroups for targeted support and improvement annually, beginning with identification for the 2018–2019 school year; and (3) schools with one or more low-performing subgroups for targeted support and improvement that must also receive additional targeted support when it identifies schools for comprehensive support and improvement, beginning with identification for the 2017–2018 school year. Many commenters, however, strongly opposed the proposed timelines because they would require States to use data from the 2016–2017 school year to identify schools by the beginning of the 2017–2018 school year. These commenters generally encouraged the Department to move the timeline back one year, so that States must identify schools for the first time by the beginning of the 2018–2019 school year. A handful of commenters also encouraged the Department to move the timeline for identifying schools with consistently underperforming subgroups for targeted support and improvement back one year, to the beginning of the 2019–2020 school year.

Commenters believed that the delayed timelines they proposed were necessary to allow States to engage in more robust consultation with stakeholders, to better align with the Department's intended State plan submission and review timeline, and to ensure consistency with sections 1111(c)(4)(D)(i) and 1111(d)(2)(D) of the ESEA, as amended by the ESSA. In particular, commenters were concerned that schools would be identified on the basis of results generated under States' prior accountability systems, using existing indicators with a heavy emphasis on test-based data, rather than the broader range of academic and non-academic indicators required by the ESEA, as amended by the ESSA. They suggested that the originally proposed timeline would not allow States to meaningfully establish systems—including taking the time to design new indicators to satisfy the requirements of the Student Success or School Quality indicator—and collect information on new indicators that had not previously been part of the accountability system.

Some commenters also encouraged the Department to allow States, under the proposed extended implementation timelines, to maintain their lists of identified schools from the 2016–2017 school year into the 2017–2018 school year consistent with the flexibility for the 2016–2017 school year under the ESSA transition provisions.

Discussion: We agree that extending the timelines for identification of schools for improvement would better support full and effective implementation of the statewide accountability systems, consistent with the requirements of the ESEA, as amended by the ESSA, and are revising the regulations accordingly. The Department also anticipates releasing non-regulatory guidance to support States in using the 2017–2018 school year as a transition year, and to ensure that States continue to support low-performing schools during this time.

Changes: We have revised § 200.19(d), and made conforming revisions throughout the final regulations, to allow States to: (1) Identify schools for comprehensive support and improvement no later than the beginning of the 2018–2019 school year; (2) identify schools with low-performing subgroups for targeted support and improvement that also must receive additional targeted support no later than the beginning of the 2018–2019 school year, based on data from the 2017–2018 school year, and (3) allow States to identify schools with consistently underperforming subgroups for targeted support and improvement no later than the beginning of the 2019–2020 school year. We have made also made additional clarifying edits, including renumbering and reorganizing this section, that do not change the substance of the requirements. Additionally, given revisions to the deadlines for submission of consolidated State plans, if a State chose to submit its plan in the first application window, it is possible the State may be able to begin their process for identifying schools for comprehensive and targeted support and improvement sooner than the required timeline in order to take advantage of the new multi-measure accountability systems established under the ESSA more quickly.

Comments: Some commenters supported the requirement to identify schools for comprehensive and targeted support and improvement by the beginning of the school year in order to give schools sufficient notice and planning time to implement appropriate interventions. One commenter recommended moving identification up by one week so that teachers know a school's status before school starts.

Other commenters opposed the requirement to identify schools by the beginning of each school year, primarily because they believed the requirement does not take into account State timelines for the collection, validation, and reporting of the data that will be used to identify schools. Some commenters recommended alternatives to the requirement that States identify schools by the beginning of the school year. For example, some commenters suggested requiring that schools be identified no later than one month after school starts, by the end of the first quarter of the school year, in the fall, by December 31 of each year, or on a State-determined timeline developed in consultation with stakeholders and submitted with State plans.

Some commenters opposed any specific timeline for school identification because they asserted the statute does not identify a point during the school year by which identification must occur.

Discussion: While we understand the challenges associated with making accountability decisions by the beginning of the school year, we believe that, given the time required for planning and implementing high-quality school improvement plans that include meaningful consultation with stakeholders, it is imperative that districts and schools know they have been identified for comprehensive or targeted support and improvement before the beginning of the school year. To that point, we are revising the regulation to clarify that it is preferable for State to identify schools as soon as possible, particularly so LEA and school staff have this information while they are engaged in other planning for the school year. Further, we believe that requiring identification no later than the start of the school year is necessary to reasonably ensure compliance with section 1111(d) of the ESEA, as amended by the ESSA, which requires that States develop and implement

plans aimed at improving student performance. It therefore falls squarely within the scope of title I, part A of the statute, consistent with section 1111(e) of the ESEA, as amended by the ESSA, and within our rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA.

Changes: We have revised § 200.19(d)(2)(i) to clarify that a State should identify schools for comprehensive or targeted support and improvement as soon as possible, but no later than the beginning of the school year for each year in which it identifies schools.

Comments: Some commenters stated that because cohort graduation rates include students who graduate at the end of the summer following the regular school year, it would not be feasible to use graduation rate data from one school year to identify schools at the beginning of the next school year.

Discussion: We recognize that the use of the preceding year's adjusted cohort graduation rate data will be difficult given the inclusion of summer graduates. For this reason, we are revising the regulations to permit States to lag graduation rate data by one year for the purposes of school accountability, including the identification of low graduation rate high schools and calculation of the Graduation Rate indicator. Additionally, in revising these regulations, we are making additional edits to clarify and streamline the regulatory requirements for the use of preceding data in school identification.

Changes: We have revised § 200.19(d)(2) to clarify that States generally must use data from the preceding school year to identify schools for comprehensive and targeted support and improvement by the beginning of each school year, but may use data from the year immediately prior to the preceding year to calculate the Graduation Rate indicator and to identify high schools with low graduation rates for comprehensive support and improvement.

Section 200.20 Data Procedures for Annual Meaningful Differentiation and Identification of Schools

Averaging Data

Comments: None.

Discussion: The Department is concerned that the use of both the terms ''combining'' and ''averaging'' in proposed § 200.20(a) is confusing because it suggests that using data from multiple grades involves a different procedure than using data from multiple school years. Both § 200.20(a)(1) and (a)(2) enable States to include greater numbers of students and students in each subgroup in data calculations for school accountability, by adding up the total number of students in a given subgroup from the current school year and the previous two school years, and by adding the total number of students in a given subgroup across each grade in a school. For example, a State using chronic absenteeism as a School Quality or Student Success indicator and selecting to combine data across school years and grades would add the number of students in the school that missed 15 days or more in each of the past three school years, and divide that number by the total number of students in the school, summed across each of the past three years—resulting in an indicator based on averages across both school years and grades. To clarify that the data procedures for combining data across grades are the same as averaging data across grades (*i.e.,* in both cases a State would ''combine'' data in order to produce an averaged result), we are revising § 200.20(a)(1) by replacing the term ''averaging'' with the term ''combining'' in each place that it appears, while maintaining the term ''averaging'' to describe the general concept in § 200.20(a). We are also revising § 200.20(a)(1)(A) to specifically clarify that in combining data across multiple schools years for purposes of calculating a school's performance on each indicator and determining whether a subgroup of students in a school meets the State's minimum n-size, the State's uniform procedure for combining data must sum the total number of students in each subgroup of students in a school described in § 200.16(a)(2) across all available years.

Further, as discussed in response to comments on § 200.19, we believe the proposed regulations were not sufficiently clear about which school-level data could be considered over multiple years—the measures that are included in a particular indicator used for annual meaningful differentiation, or a school's overall determination. We are revising § 200.20(a) to clarify that the indicators may be averaged over up to three school years or across all grades in a school, and that these indicators are subsequently used for differentiation and identification of schools. Further, we are revising § 200.20(a), as previously discussed in response to comments on § 200.15, to clarify that a State may average school-level data for the limited purpose of meeting the requirement in § 200.15(b)(2), and the adjusted cohort graduation rate for purposes of identifying high schools with low graduation rates. Any further clarification of these requirements will be provided in non-regulatory guidance.

Changes: We have revised § 200.20(a) to (1) be more consistent and clear in using the term ''averaging'' to describe generally how school-level data may be used over multiple years or school grades and ''combining'' to describe the procedures in § 200.20(a)(1) and (2); (2) to specify that in averaging data across years a State must sum the total number of students in each subgroup of students across all school years for purposes of calculating school performance on the indicators and whether a particular subgroup meets the State's minimum n-size; and (3) to clarify the purposes for which a State may average data across years: Calculating indicators used for annual meaningful differentiation, meeting the requirement under § 200.15(b)(2), and identifying low graduation rate high schools.

Comments: One commenter suggested that proposed § 200.20 require that the procedure used for averaging data across school years and combining data across grades be identified in LEA report cards, in addition to State report cards.

Discussion: Section 200.32(a)(3) requires each State and LEA report card to describe, as part of the description of the accountability system, the State's uniform procedure for averaging data across years or across grades consistent with § 200.20.

Changes: None.

Comments: One commenter recommended allowing States to average date used for accountability purposes for more than three school years.

Discussion: The Department's proposal gives States the flexibility to combine data across years or grades because averaging data in this manner can increase the data available to consider as part of accountability systems, both improving the reliability of accountability designations and increasing the number of subgroups in a school that meet the State's minimum n-size (*e.g.,* because adding together up to three cohorts of students for whom there is available data potentially triples the number of students with valid data, consistent with final § 200.20(a)(1)(A)). The Department believes that averaging data over more than three school years is inconsistent with current practice and regulation, ill-aligned with the requirements for school identification under the statute (*e.g.,* the identification of schools for comprehensive support and improvement at least once every three years), and increases the risk of inappropriately masking current-year

school performance—increasing the risk that low-performing schools are not identified in a timely fashion.

Changes: None.

Comments: Commenters supported the proposed requirement that States continue to report data for a single year, without averaging, on State and LEA report cards, even if a State averages data across years. Other commenters supported the language in this section that allows States to average data across school years to meaningfully differentiate schools. Commenters noted this flexibility allows States to have more meaningful accountability determinations for smaller schools, while also minimizing the number of schools that move in or out of a particular status from year to year due to n-size limitations.

Discussion: We appreciate the commenters' support for these provisions and agree that this flexibility is an important tool for States in designing effective systems of school accountability.

Changes: None.

Comments: Some commenters felt that the ESEA, as amended by the ESSA, does not authorize the Department to regulate on data averaging and that decisions about data averaging should remain with the States. Other commenters objected to the proposed requirement that States continue to report data that is not averaged for each indicator on State and LEA report cards even if a State averages data across years for accountability purposes (§ 200.20(a)(1)(ii)(B)). The commenters asserted that reporting data that is not averaged undermines the purpose of averaging, which is to obtain a more statistically valid and reliable measure of performance than shorter timeframes such as a single year, and that States electing to average data over three years should report a rolling average for each indicator each year.

Discussion: The proposed data averaging procedures are intended to provide States with limited additional flexibility to increase the data available to consider in the accountability system, thereby improving the reliability of accountability determinations and increasing the number of subgroups in a school that meet the State's minimum n-size. These rationales are not as relevant to reporting, where the key goal is to inform parents and other stakeholders (*e.g.,* teachers, principals or other school leaders, local administrators) of the performance of specific students rather than cohorts of students averaged over multiple years.

Further, we believe the requirement to use the same uniform data averaging procedure for all public schools is necessary to ensure that the Statewide accountability system is applied in a fair and consistent manner to all public schools in a State. Additionally, the requirement to report data for a single year, even if a State averages data for accountability purposes, is necessary to ensure compliance with the requirement in section 1111(h) of the ESEA that report cards be presented in an ''understandable and uniform format.'' Accordingly, the parameters that the regulation places on a State's use of data averaging fall squarely within the scope of section 1111 of the ESEA, as amended by the ESSA, consistent with section 1111(e), and constitute an appropriate exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA (*see* further discussion under the heading *Cross-Cutting Issues*).

Changes: None.

Partial Enrollment

Comments: Some commenters objected to the use of the term ''enroll'' in proposed § 200.20(b) instead of ''attend,'' which is the term used in the statute.

Discussion: The Department believes that enrollment, rather than attendance, is a better measure of determining which students a school should be held accountable for, both because schools have a responsibility to promote and ensure regular attendance and because including students in accountability systems on the basis of attendance could create an incentive to discourage low-performing students from attending school, which is contrary to the purpose of title I to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. For this reason, the Department declines to make changes to § 200.20(b).

Changes: None.

Comments: Commenters also objected to the requirement that students enrolled for more than half of the year be included in the calculation of school performance for accountability purposes, in part because it represents a significant change from the ''full academic year'' requirements under the NCLB. Other commenters sought additional flexibility for States or LEAs to use existing methods or definitions for determining what constitutes partial enrollment or to develop their own definitions; including, for example, the percentage of time a student is in the school building.

Discussion: The requirement that the performance of any student enrolled for at least half of the school year be included on each indicator in the accountability system is based on section 1111(c)(4)(F) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: A few commenters supported the proposed regulations in § 200.20(b)(2)(ii) for ensuring students are included in graduation rate calculations if they exit school and were only enrolled in a high school for part of the school year. Other commenters supported adding a requirement, in order to ensure all students are included in the calculation of graduation rates, to provide each State the authority to reassign students to schools for calculating adjusted cohort graduation rates when implementing the partial attendance requirements of ESSA.

Discussion: We appreciate the support of commenters for these provisions and agree that it is critical to ensure accurate calculation of adjusted cohort graduation rates. While we disagree that the regulations should be amended to provide a State will sole responsibility to reassign students to a different cohort, we note that § 200.20(b)(2) requires that if a student who was partially enrolled exits high school without receiving a regular diploma and without transferring to another high school that grants such a diploma during the school year, the State establishes a process, described further under 200.34, that the LEA must use to assign the student to the cohort of a particular high school. In addition, § 299.13(c)(1)(A)–(B) requires each State receiving funds under part A of title I to assure in its State plan that—in applying the approach under § 200.20(b) that its LEAs include students who are enrolled in the same school for less than half of the academic year and who exit high school without a regular diploma and without transferring into another high school that grants such a diploma in the calculation of adjusted cohort graduation rates—all students are included in the denominator of the calculation either for the school in which the student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12, or for the school in which the student was most recently enrolled.

Changes: None.

Sections 200.21 and 200.22 Comprehensive and Targeted Support and Improvement

Comments: Several commenters provided general support for the clarification in the proposed regulations regarding the actions to be taken to support and improve schools identified for comprehensive and targeted support

and improvement, including State and local flexibility to determine the appropriate interventions for struggling schools.

Discussion: We appreciate the general support for the regulations on comprehensive and targeted support and improvement.

Changes: None.

Comments: Several commenters opposed the requirement that a State notify each LEA with a school identified for comprehensive support and improvement no later than the beginning of the school year, with one commenter stating that the proposed timeline is unreasonable given that identified schools may use the first year for planning and need not implement improvement plans and another recommending that States instead be permitted to develop their own notification timelines as part of their State plans.

Discussion: A clear, regular timeline for identification of schools is critical to meet the needs of students, who are likely to have been poorly served for years before their schools are identified for improvement and whose risk of educational failure only increases if identification is further delayed. As previously discussed under § 200.19, we also believe that given the time required for planning and implementing high-quality school improvement plans that include meaningful consultation with stakeholders, it is imperative that districts and schools know they have been identified for support and improvement as soon as possible, but no later than the beginning of the school year. Moreover, States and LEAs have faced, and generally met, an even earlier school identification timeline for the past decade under NCLB.

Changes: For consistency with revisions to § 200.19(d)(2)(i), we are revising § 200.21(a) and § 200.22(a)(1) to clarify that a State should notify each LEA with an identified school of such a school's identification as soon as possible, but no later than the beginning of the school year.

Notice to Parents: Comprehensive and Targeted Support and Improvement

Comments: Many commenters supported the Department's proposed requirements regarding notice to the parents of students enrolled in the schools identified for comprehensive and targeted support and improvement, including an explanation of how parents can become involved in the development and implementation of the support and improvement plan.

Some commenters supported the requirements but suggested additional modifications to the proposed notice requirements, including defining ''promptly'' so as to specify a timeline for notifying parents (*e.g.,* no later than 30 or 60 days following identification), extending notice requirements to cover students as well as parents, and requiring LEAs to pilot their notices (potentially in collaboration with available parent or family engagement centers) to ensure they are easily understandable by diverse parents.

Several commenters, however, stated that the proposed parental notification requirements exceeded the Department's authority under the ESEA, as amended by the ESSA, and recommended eliminating any language not in the statute or making § 200.21(b)(1)–(b)(3) permissive rather than required.

Discussion: We appreciate those comments in support of our proposed notification requirements. We decline to further define terms (*e.g.,* ''promptly'') or to otherwise expand requirements related to parental notification because we believe States should have flexibility, in consultation with their LEAs, to determine a notification process that meets local needs and circumstances. At the same time, we believe the requirements in § 200.21(b)(1)–(3) are necessary to ensure that LEAs and schools, respectively, are able to comply with the requirements in section 1111(d)(1)(B) regarding the development and implementation of comprehensive support and improvement plans, and in section 1111(d)(2)(B) regarding the development and implementation of targeted support and improvement plans, ''in partnership with stakeholders,'' including parents. Accordingly, these requirements fall squarely within the scope of section 1111(d) of the ESEA, as amended by the ESSA, consistent with section 1111(e), and within the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA (*see* further discussion regarding the Department's rulemaking authority under the heading *Cross-Cutting Issues*). We, therefore, decline to revise these notice requirements.

Changes: None.

Comments: Several commenters made suggestions regarding the content of the notice to parents required by §§ 200.21(b) and 200.22(b), including specifying any low-performing subgroup or subgroups of students that led to the school's identification, and describing available supports and interventions for students who are below expected levels in math, reading, or ELP.

Discussion: Sections 200.21(b) and 200.22(b) require the notice to include, among other requirements, the reason or reasons for the identification, including, for a school that is identified for targeted support and improvement, the specific subgroup or subgroups that led to the school's identification. However, we believe the LEA is unlikely to have information on available supports and interventions for low-performing students at the time of initial parental notification, in part because a key purpose of such notification is to involve parents, in collaboration with other stakeholders, in decisions about the supports and interventions for such students that will be included in comprehensive or targeted support and improvement plans, as applicable.

Changes: None.

Comments: A few commenters suggested a change to the requirement that parental notification of a school's identification for comprehensive or targeted support and improvement include, if applicable, the subgroup or subgroups that led to the school's identification because it could reveal personally identifiable information. These commenters recommended that the regulations cross-reference the provision in § 200.16(b) establishing a minimum subgroup size for protection of personally identifiable information.

Discussion: Section 200.16(b) requires that a school is only held accountable for subgroup performance if that subgroup meets a State-determined minimum subgroup size sufficient to yield statistically reliable information for each purpose for which disaggregated data are used, including for purposes of reporting information under section 1111(h) of the ESEA, as amended by the ESSA, or for purposes of the statewide accountability system under section 1111(c) of the ESEA, as amended by the ESSA. Consequently, any notice to parents that includes the subgroup or subgroups that led to a school's identification would not include a subgroup that did not meet the minimum subgroup size, thereby protecting personally identifiable information.

Changes: None.

Comments: Some commenters suggested specific modifications to proposed § 200.21(b)(2) regarding written and oral translation of notices to parents. In particular, rather than requiring oral translation when written translation may not be practicable, some commenters suggested requiring LEAs to secure written translations for at least the most populous language other than English in a school that is identified for support and improvement. One

commenter suggested that the final regulations should require the translation of those notices consistent with the Civil Rights Act of 1964 and Executive Order 13166. Another commenter felt that the regulations should require written notice and not rely on oral translations. However, another commenter suggested that oral translations and alternate formats should be required only to the extent practicable. Several commenters suggested that the phrase ''to the extent practicable'' should be clarified. One commenter requested that all LEAs consider it to be practicable to translate notices into American Indian, Alaska Native, and Native Hawaiian languages. This commenter also suggested the Department provide assistance in either funding or procuring services that will allow States to enforce the translation requirements. A few commenters stated that if a notice is not translated, it should include information for how a parent can request free language assistance from the school or district.

Other commenters opposed the specific requirements regarding written and oral translation because they believe there is no statutory authority for the requirement. One commenter specifically stated that this is an issue that should be left to the States.

Discussion: The statute and regulations require that, before a comprehensive or targeted support and improvement plan is implemented in an identified school, the LEA or school, as applicable, must develop such a plan in partnership with stakeholders, including parents. In order to ensure that parents are meaningfully included in this process, §§ 200.21(b) and 200.22(b) require an LEA to provide notice to parents of the school's identification that is not only understandable and clear about why a school was identified, but also enables parents to be engaged in development and implementation of the comprehensive or targeted support and improvement plan, as required by the statute. These requirements provide greater transparency and help parents understand the need for and the process for developing a school's comprehensive or targeted support and improvement plan, so that they can meaningfully participate in school improvement activities and take an active role in supporting their child's education. Accordingly, we believe that the requirements regarding written and oral translations fall squarely within the scope of, and are necessary to ensure compliance with sections 1111(d)(1)(B) and 1111(d)(2)(B) of the ESEA, as amended by the ESSA, and therefore constitute a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA and are consistent with section 1111(e) (*see* further discussion under the heading *Cross-Cutting Issues*).

We also disagree with commenters that we should require only written translations and not allow for oral translations, or that we should require oral translations and alternate formats only to the extent practicable. Parents with disabilities or limited English proficiency have the right to request notification in accessible formats. Whenever practicable, written translations of printed information must be provided to parents with limited English proficiency in a language they understand. However, if written translations are not practicable, it is practicable to provide information to limited English proficient parents orally in a language that they understand. This requirement is consistent with Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and its implementing regulations. Under Title VI, recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency. It is also consistent with Department policy under Title VI and Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency).

We decline to further define the term ''to the extent practicable'' under these regulations, but remind States and LEAs of their Title VI obligation to take reasonable steps to communicate the information required by the ESEA, as amended by the ESSA, to parents with limited English proficiency in a meaningful way.[24] We also remind States and LEAs of their concurrent obligations under Section 504 and title II of the ADA, which require covered entities to provide persons with disabilities with effective communication and reasonable accommodations necessary to avoid discrimination unless it would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. Nothing in ESSA or these regulations modifies those independent and separate obligations. Compliance with the ESEA, as amended by the ESSA, does not ensure compliance with Title VI, Section 504 or title II.

Changes: None.

Comments: While a small number of commenters supported the proposed accessibility requirements generally, several of the commenters expressed concern that the requirements do not sufficiently ensure that parents and other stakeholders are able to access the notices and documentation and information when it is posted on Web sites. Of the commenters expressing concern, several discussed the accessibility of parent notices provided on LEA Web sites, particularly for individuals with disabilities.

Discussion: For a detailed discussion about accessibility of Web sites, please see the discussion below in §§ 200.30 and 200.31.

Changes: None.

Comments: None.

Discussion: Proposed § 200.21(b)(3) required notice of a school's identification for comprehensive support and improvement in an alternative format accessible to a parent or guardian who is an individual with a disability, upon request. The term ''parent'' is defined in section 8101(38) of the ESEA, as amended by the ESSA. Under this definition, a ''parent'' includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). Including the term ''guardian'' in § 200.21(b)(3) is unnecessary and redundant.

Changes: We have revised § 200.21(b)(3) by removing the reference to a guardian.

Comments: One commenter suggested that a review of notices be part of Federal and State monitoring of the requirements under title I of the ESEA, as amended by the ESSA.

Discussion: The Department appreciates and will take this comment into consideration when developing plans for monitoring State and local accountability systems under the ESEA, as amended by the ESSA.

Changes: None.

Needs Assessment: Comprehensive Support and Improvement

Comments: Many commenters expressed general support for the proposed regulations in § 200.21(c) requiring that, for each identified school, an LEA conducts a needs assessment in partnership with stakeholders (including principals and other school leaders, teachers, and parents). Many of these commenters suggested the regulations would be

[24] For more information on agencies' civil rights obligations to Limited English Proficient parents, see the Joint Dear Colleague Letter of Jan. 7, 2015, at Section J. (*http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf*).

strengthened by ensuring LEAs partner with a broader array of stakeholder groups, such as: Students, public health and health care professionals, community-based organizations, faith-based organizations, local government, institutions of higher education, businesses, and intermediary organizations. Some suggested the stakeholders engaged in this endeavor also include specific types of teachers and leaders, such as childhood educators and leaders working with children prior to school entry, career and technical educators, and specialized instructional support personnel. Several commenters expressed concern about the opportunity for limited English proficient families to fully participate in the needs assessment; one of these commenters recommended that the regulations require LEAs to provide interpretation services in order for parents to have a meaningful opportunity to participate in the process.

Discussion: We appreciate the support from commenters for the proposed needs assessment requirements. The regulations require LEAs to partner with the same stakeholders with whom they are required to partner for purposes of developing the comprehensive support and improvement plan when they conduct the needs assessment that will inform that plan—principals and other school leaders, teachers, and parents. Although we encourage LEAs to partner with a broad range of stakeholders when developing and implementing a robust needs assessment, we believe LEAS should have discretion regarding the inclusion of additional groups or individuals in this work. LEAs must provide language assistance, consistent with their obligations under title VI, in order for limited English proficient families to participate meaningfully in the needs assessment.

Changes: None.

Comments: Some commenters suggested that a comprehensive needs assessment examine other measures in addition to those described in § 200.21(c)(1)–(c)(4). For instance, many commenters recommended requiring the needs assessment to include measures of school climate (*e.g.,* chronic absenteeism; suspension; bullying and harassment). One commenter suggested the needs assessment also include the school's existing interventions, including how they are being implemented and their effectiveness. Several commenters suggested changes specific to § 200.21(c)(4) regarding the optional examination of the school's performance on additional, locally selected indicators. One such commenter suggested adding a requirement that locally selected indicators be supported, to the extent practicable, by the strongest evidence that is available and appropriate to the identified school. One commenter recommended that States be given discretion to specify which additional local indicators should be included in the needs assessment in order promote uniform requirements for needs assessments used by LEAs. Finally, one commenter stated that the Department does not have the authority to specify the minimum elements of a needs assessment.

Discussion: The Department agrees with the commenters who indicated that the regulations should require LEAs, in partnership with stakeholders, to examine additional measures in a needs assessment. The needs assessment should examine the school's unmet needs, including the needs of students; school leadership and instructional staff; the quality of the instructional program; family and community involvement; school climate; and distribution of resources, including results of the resource inequity review. We believe these additions allow for the needs assessment to include measures of school climate and the school's existing interventions, as recommended by commenters.

We disagree, however, with commenters' suggested revisions regarding the optional use of a school's performance on additional, locally selected indictors. Section 200.21(c)(4) allows, at the LEA's discretion, examination of an identified school's performance on additional, locally selected measures that are not included in the State's system of annual meaningful differentiation and that affect school outcomes in the school. We do not want to reduce local discretion on these measures for use in the needs assessment by adding specific requirements in the areas suggested by the commenters. Consequently, we decline to regulate further in this area.

We also disagree with commenters who indicated that the Department lacks authority to specify the minimum requirements of the needs assessment. We believe these requirements are necessary to reasonably ensure that the needs assessment is meaningful and results in the development of a support and improvement plan that meets all requirements for such plans and will ultimately meet the statutory goal of improving student achievement and school success and closing academic achievement gaps. Accordingly, the regulation constitutes a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA and falls squarely within the scope of section 1111(d), consistent with section 1111(e) (*see* further discussion under the heading *Cross-Cutting Issues*).

Changes: We have revised § 200.21(c) to require the needs assessment to include an examination of the school's unmet needs, including the unmet needs of students; school leadership and instructional staff; the quality of the instructional program; family and community involvement; school climate; and distribution of resources, including results of the resource inequity review. We have also renumbered the paragraphs in this subsection to accommodate the substantive revision.

Comments: One commenter suggested adding a needs assessment requirement for targeted support and improvement schools that would include an assessment of school climate and safety.

Discussion: The statute does not require a school identified for targeted support and improvement to conduct a needs assessment, but we encourage LEAs to consider conducting a needs assessment for such schools in order to develop an effective support and improvement plan tailored to local needs.

Changes: None.

Comments: None.

Discussion: In proposed § 200.21(c)(4), the needs assessment may examine, at the LEA's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school. In order to clarify that the term ''locally selected indictors'' is separate and apart from the accountability indicators described in § 200.14, we have changed the term to ''locally selected measures.''

Changes: We have revised § 200.21(c)(5), as renumbered, to say that an LEA may examine locally selected measures.

Comprehensive and Targeted Support and Improvement Plans: In General

Comments: One commenter claimed that the Department does not have the authority to promulgate regulations that specify the minimum elements of comprehensive support and improvement support plans.

Discussion: The regulations clarify and provide additional detail regarding how an LEA must comply with the requirements in section 1111(d)(1)(B)(i)–(iv) of the ESEA, as amended by the ESSA, which establish

the basic elements of a comprehensive support and improvement plan. We believe these regulatory provisions are necessary to reasonably ensure that each comprehensive support and improvement plan meets the statutory requirements for such plans and ultimately meets the statutory goal of improving student achievement and school success and closing educational achievement gaps and therefore fall squarely within the scope of title I, part A of the statute. Moreover, the regulations ensure compliance with these key statutory provisions while maintaining significant flexibility for LEAs by, for instance, offering examples of evidence-based interventions an LEA might implement but leaving the selection of appropriate interventions to LEAs. Accordingly, the regulation constitutes a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA and does not violate section 1111(e) (*see* further discussion under the heading *Cross-Cutting Issues*).

Changes: None.

Comments: One commenter suggested that the regulations clarify that States and districts can implement comprehensive support and improvement plans that address not only a school in need of comprehensive support and improvement but also the schools that feed students into that school.

Discussion: While § 200.21(d) requires that each LEA develop and implement a comprehensive support and improvement plan only for each identified school, an LEA may choose to consider supporting schools that feed into identified schools. Given this existing flexibility, we do not believe further regulation is necessary.

Changes: None.

Comments: A few commenters suggested requiring a comprehensive support and improvement plan to address how the LEA will build sufficient teacher and leader capacity to effectively implement interventions.

Discussion: We appreciate the intentions of the commenters in recommending changes to support teachers and leaders in their implementation of comprehensive support and improvement plans but believe that further requirements in this area would not be consistent with the significant discretion afforded to schools by the ESEA, as amended by the ESSA, in the development and implementation of such plans.

Changes: None.

Comments: One commenter suggested adding new requirements for comprehensive support and improvement plans regarding the effective implementation of evidence-based interventions, while another commenter suggested recommended schools share data on the implementation of selected interventions with LEAs to support an evaluation of the intervention's impact.

Discussion: We believe § 200.21(d)–(f) already provides for a continuous improvement process that would support the effective implementation of interventions selected as part of a comprehensive support and improvement plan, including stakeholder participation, State monitoring of plan implementation, and more rigorous interventions and State support if an identified school does not meet exit criteria.

Changes: None.

Comments: One commenter suggested strengthening the requirements for monitoring schools identified for targeted improvement and support by revising § 200.22(c) so that targeted support and improvement plans include, at a minimum, annual performance and growth benchmarks. The plan should also require a demonstration of sustained improvement against benchmark goals over at least two years before a school is exited from targeted support and improvement.

Discussion: We believe §§ 200.22(c)–(e) already require a meaningful continuous improvement process for schools implementing targeted support and improvement plans, and decline to regulate further in this area.

Changes: None.

Comments: Several commenters suggested that the targeted support and improvement plans required in § 200.22(c) should include interventions designed for the specific subgroups of students identified as consistently underperforming rather than for all of the lowest-performing students. One commenter asserted that if a targeted support and improvement school has both consistently underperforming and low-performing subgroups, the students in these groups should be considered the lowest-performing students to whom interventions should be tailored.

Discussion: We appreciate the comments suggesting that the Department require targeted support and improvement plans to focus on interventions tailored to specific subgroups. We decline to make this change, however, in order to maintain consistency between these regulations and the applicable non-discrimination legal requirements. To that end, we are clarifying in § 200.22(c)(7) that the resource inequity review required for a school with low-performing subgroups must identify and address resource inequities, but not the effects of any identified inequities on the low-performing subgroups.

Changes: We have revised § 200.22(c)(7) to eliminate the requirement that the resource inequity review address the effects of identified inequities on each low-performing subgroup in the school.

Comments: Several commenters suggested revising proposed § 200.22(c)(3)(ii) regarding the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school. Recommended changes include requiring that, to extent practicable, locally selected indicators be supported by the strongest available evidence, distinguish between schools, predict performance, and are amenable to intervention.

Discussion: We appreciate the intentions of the commenters in recommending changes designed to strengthen the impact of locally selected measures described in § 200.22(c)(3)(ii), but believe that further requirements in this area would not be consistent with the significant discretion afforded to schools by the ESEA, as amended by the ESSA, in the development and implementation of targeted support and improvement plans.

Changes: None.

Comments: One commenter suggested adding to § 200.22(c)(3) a new requirement to consider the implementation and effectiveness of existing interventions when developing a targeted support and improvement plan.

Discussion: We appreciate the intention of the commenter in recommending changes designed to strengthen targeted support and improvement plans, but believe that further requirements in this area would not be consistent with the significant discretion afforded to schools by the ESEA, as amended by the ESSA, in the development and implementation of targeted support and improvement plans.

Changes: None.

Stakeholder Engagement: Comprehensive and Targeted Support and Improvement Plans

Comments: Many commenters expressed support for the required involvement of key stakeholders—including principals and other school

leaders, teachers, and parents—in the development and implementation of comprehensive and targeted support and improvement plans, but recommended the addition of a wide range of other specified stakeholders in the final regulation, such as school psychologists, students, and community-based organizations. In addition, one commenter recommended the addition of language requiring school districts subject to section 8538 of the ESEA to consult with tribal representatives before taking action under proposed §§ 200.21 and 200.22 (as well as under proposed §§ 200.15(c), 200.19, and 200.24).

Discussion: We appreciate the support for the proposed regulations regarding stakeholder engagement in plan development and implementation. We emphasize that the list of stakeholders specified in the regulations—which mirrors the list provided in section 1111(d) of the ESEA, as amended by the ESSA—represents the minimum requirements for the stakeholders who should be engaged in plan development and implementation, and we encourage LEAs to include additional stakeholders as appropriate. We are, however, revising the final regulations in § 200.21(d)(1) to encourage the inclusion of students, as appropriate, in the development of school improvement plans. While parents must be included in the development of the plans and are effective advocates on behalf of their children, we believe that directly involving students in developing school improvement plans, particularly in the case of older students, could ensure that a school's plan represents the perspectives of those who will be most directly impacted by its implementation. We are also making this revision to similar provisions in §§ 200.15(c)(1)(i) and 200.22(c)(1).

We also agree that the tribal consultation requirement in section 8538 of the ESEA, which requires certain school districts to consult with tribal representatives before submitting a plan or application under ESEA-covered programs, applies to comprehensive support and improvement plans under § 200.21(d). We are therefore adding language to § 200.21(d)(1) to specify that, for those affected LEAs, the stakeholders with whom the LEA works to develop the plan must include Indian tribes.

The requirements of section 8538 do not apply to the needs assessments under § 200.21(c) because there is no LEA plan or application that must be submitted. However, because the needs assessment is an important part of developing a comprehensive support and improvement plan, we encourage affected LEAs to involve local tribes in the needs assessment process. The tribal consultation requirement does not apply to the other provisions requested by the commenter, either because the regulatory requirements do not apply to LEAs (proposed § 200.19 contains State requirements, not LEA plan requirements; proposed §§ 200.15(c) and 200.22 apply to school-level rather than LEA-level plans) or because the LEA application requirement is not for a covered program (proposed § 200.24 contains application requirements for school improvement funds under section 1003(a) of the ESEA, which is not a covered program).

Changes: We have revised § 200.21(d)(1) to include Indian tribes as a stakeholder for LEAs affected by section 8535 of the ESSA, as amended by the ESSA, and to include students, as appropriate. We have also revised §§ 200.15(c)(1)(i) and 200.22(c)(1) to include students, as appropriate, in the development of school improvement plans related to low participation rates and to identification for targeted support and improvement.

Comments: Comprehensive and targeted support and improvement plans (as described in §§ 200.21(d) and 200.21(c), respectively) must be developed in partnership with stakeholders. Several commenters suggested the regulations clarify what is meant by the term ''partnership,'' including by requiring shared decision-making with families (including training for parents and family members and specific provisions ensuring the meaningful inclusion of English learner families), sustained collaboration with equitable participation by diverse stakeholders, the integration of such partnerships with LEA and school parent and family engagement policies, and participation in the plan's monitoring and refinement cycle. One commenter also requested that the Department urge LEAs to work with stakeholders to determine whether changes are needed in pre-existing plans that may have been created without stakeholder engagement.

Discussion: We appreciate the commenters' suggestions to further define how comprehensive and targeted support and improvement plans are developed and implemented in partnership with stakeholders, but we believe the requirements in §§ 200.21(d)(1) and 200.22(c)(1) largely address the concerns and suggestions made by commenters on this matter.

Changes: None.

Comments: None.

Discussion: Proposed §§ 200.21(d) and 200.22(c) stated that, in developing comprehensive support and improvement plans, each LEA must describe in the plan how early stakeholder input was solicited and taken into account in the development of the plan, including the changes made as a result of such input. It is possible that no changes are necessary as a result of that input. Therefore, for the sake of clarity, we are revising the requirement to refer to ''any'' changes made as a result of input.

Changes: We have revised §§ 200.21(d)(1)(i) and 200.22(c)(1)(i) to say ''any changes'' rather than ''the changes made as a result of such input.''

Evidence-Based Interventions: Comprehensive and Targeted Support and Improvement Plans

Comments: Many commenters supported the specific examples of interventions cited in § 200.21(d)(3) or suggested adding a wide range of other interventions to the final regulations. Some of these suggestions were similar to interventions already on the list, such as: Partnering with teacher preparation providers to implement year-long, clinically rich preparation programs that incorporate residents fully into instructional and school improvement efforts; expanded learning time and afterschool programs; and increased access to high-quality, developmentally-appropriate early education. Other commenters suggested additional examples not part of the current list, such as: Culturally responsive modifications to school interventions for underserved students; strategies to increase family and community engagement; and innovative instructional models that incorporate high-quality career technical education. Several commenters also recommended clarifying certain aspects of the interventions on the proposed list or revising them to reflect additional requirements or strategies.

Other commenters opposed the inclusion of certain interventions on the list, citing concerns about the research base and/or effectiveness of the examples on the list, whether they would necessarily be appropriate in all local contexts, and whether the appearance of an ''approved'' list in the regulations is consistent with local discretion to select appropriate interventions responding to local needs. One commenter recommended striking the list of examples in favor of simply requiring that interventions meet the definition of ''evidence-based'' under section 8101(21) of the ESEA, as amended by the ESSA, or revising the

list to include only those interventions supported by strong, moderate, or promising evidence, since those three levels are required for any improvement plans funded by the school improvement funds authorized by Section 1003 of ESSA.

Discussion: The list of examples in § 200.21(d)(3) is intended merely to illustrate the types of interventions an LEA may choose to consider when developing a comprehensive support and improvement plan, and we recognize that there are many other interventions that an LEA could select in response to the specific needs of a particular school and community. The options available to LEAs include any of the activities and approaches recommended by the commenters, as long as they meet the requirements of § 200.21(d)(3). For these reasons, we decline to add or remove any interventions to the non-exhaustive list, though we are making clarifications to several of the interventions currently on the list.

Changes: We have revised the final regulations to clarify several of the examples of interventions in § 200.21(d)(3). For one of these interventions, strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds, we added students from varying racial and ethnic backgrounds. In the strategy to replace school leadership, the example now also includes identifying a new principal who is trained for or has a record of success in low-performing schools. We clarified the language regarding the revoking or non-renewing a public charter school's charter by adding language about public charter schools working in coordination with the applicable authorized public chartering agency to revoke or non-renew a school's charter and ensuring actions are consistent with State charter law and the school's charter.

Comments: One commenter recommended including in § 200.22(c) a examples of interventions for targeted support and improvement similar to that proposed in § 200.21(d)(3) and including in that list: (1) Increasing access to effective general and special education teachers and specialized instructional support personnel or adopting incentives to recruit and retain effective general and special education teachers and specialized instructional support personnel; and, (2) adopting the use of multi-tiered systems of support to address academic and behavioral deficits, including the use of positive behavioral interventions and supports.

Discussion: The examples of interventions listed in § 200.21(d)(3) are intended, in part, to illustrate the types of broad, comprehensive reforms that address the needs of an entire school, and not the narrower, more tailored interventions generally appropriate for schools identified for targeted support and improvement. Given the large number of differentiated strategies that may be used in schools identified for targeted support and improvement, depending on the specific needs and circumstances of the lowest-performing students in such schools, we do not believe it would be helpful to create a similar illustrative list for such schools in the final regulations.

Changes: None.

Comments: Several commenters suggested adjustments to the proposed requirement in § 200.21(d)(3) and 200.22(c)(4) that comprehensive and targeted improvement and support plans include ''one or more'' interventions to improve student outcomes in the school that meet the definition of evidence-based under section 8101(21) of the ESEA, as amended by the ESSA. Some believe that considering the multitude of issues facing identified schools, a single intervention is insufficient to address the root cause of the overall low performance of the school. Several commenters suggested requiring more than one intervention, such as requiring two or more interventions that are evidence-based; two or more interventions for each subgroup identified; and multiple evidence-based interventions that directly and comprehensively address the particular root causes of the school's low performance, which may include interventions that vary by academic subject area or meet the differing needs of students within a single subgroup.

Discussion: While we believe that the commenters have identified important issues for LEAs and schools to consider in developing their improvement plans, we do not believe it is either appropriate or consistent with local discretion under the ESEA, as amended by the ESSA, to include additional requirements around the use of evidence-based interventions in the final regulations.

Changes: None.

Comments: One commenter suggested clarifying the term ''intervention'' in § 200.22(c)(4) by adding regulatory language that an intervention may include activities, strategies, programs, or practices.

Discussion: We agree that an intervention may include activities, strategies, programs, and practices, but decline to define the term further in the final regulation. However, we have provided further guidance around the use of evidence-based interventions in non-regulatory guidance.[25]

Changes: None.

Comments: One commenter recommended requiring that the intervention or interventions chosen for students instructed primarily through a Native American language that are included in comprehensive support and improvement plans are provided through the Native American language of instruction and do not limit the preservation or use of Native American languages.

Discussion: Comprehensive and targeted support and improvement plans are developed in partnership with school leaders, teachers, and parents, and we encourage stakeholders and LEAs to consider the unique needs of students in identified schools when choosing appropriate interventions. However, requiring that supports be provided to students in a particular language is beyond the scope of these regulatory provisions, which address support and improvement to a school in general (see examples in § 200.21(d)(3)), rather than to students individually.

Changes: None.

Comments: Many commenters expressed general support for the proposed requirements in §§ 200.21(d)(3)(i)–(iv) and 200.22(c)(4)(i)–(iv) regarding the selection of evidence-based interventions in comprehensive and targeted support and improvement plans. Some of these commenters also recommended a wide range of specific changes to these provisions, including, for example, additional methodological requirements for selecting and using evidence-based interventions, the use of State-established evidence-based interventions or a State-approved list of evidence-based interventions, ensuring that selected interventions respond to the needs assessment, strengthening local capacity to identify and implement evidence-based interventions, building evidence through evaluation of selected interventions, and justifying the use of non-evidence-based interventions. One commenter suggested changing the provisions to require that interventions maintain access to well-rounded education for all students, including access to, and participation in, music and the arts as well as other well-rounded education subjects supported by the ESEA, as amended by the ESSA.

[25] See: *http://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf.* Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments.

Another commenter recommended that the Department, with assistance from the Institute of Education Sciences, create a compendium of Federally-supported rigorous research on effectiveness of interventions.

Some commenters opposed the proposed requirements in § 200.21(d)(3)(i)–(iv) and § 200.22(c)(4)(i)–(iv) regarding the selection of evidence-based interventions, asserting that these requirements inappropriately exceed those of the ESEA, as amended by the ESSA. One commenter stated that many districts do not have the capability to meet these requirements and may have to rely on costly external consultants for this purpose. This commenter also noted that the highest three tiers of evidence in the evidence-based definition are required only for interventions funded with State-awarded school improvement grants under section 1003 of the ESEA, as amended by the ESSA.

Discussion: We appreciate the support of some commenters for the regulations regarding evidence-based interventions. While we appreciate the suggested revisions to the language in §§ 200.21(d)(3) and 200.22(c)(4), the Department believes, with one exception, that the current language is clear and declines to amend the regulations. Specifically, we are revising the provisions in proposed §§ 200.21(d)(3)(iv) and 200.22(c)(4)(iii) that stated that an intervention may be selected from a State-approved list of interventions consistent with § 200.23(c)(2) to more clearly articulate these optional State authorities. Specifically, we are revising final §§ 200.22(d)(3)(iv) and 200.22(c)(3)(iv) so that it pertains only to ''exhaustive or non-exhaustive'' lists of evidence-based interventions that may be established by the State and so that it references the optional State authority in § 200.23(c)(2). We are further clarifying that, in the case of a State choosing to establish an exhaustive list of evidence-based interventions under § 200.23(c)(2), the evidence-based interventions in the support and improvement plan *must* be selected from that list, while in the case of a State opting to establish a non-exhaustive list under § 200.23(c)(2), the evidence-based interventions *may* be selected from that list. We are also adding § 200.22(d)(3)(v) as a separate provision to clarify that the evidence-based intervention selected in a comprehensive support and improvement plan may be one that is determined by the State, consistent with State law, as described in section 1111(d)(1)(3)(B)(ii) of the ESEA, as amended by the ESSA, and § 200.23(c)(3). We believe these revisions help clarify how a State may utilize the authorities described in § 200.23(c)(2)–(3), and the distinctions between them. These revisions in no way alter an LEA or school's discretion to choose an evidence-based intervention from those included on a State-established list, exhaustive or otherwise.

We disagree with commenters who indicated that § 200.21(d)(3) exceeds the Department's rulemaking authority. These requirements clarify how an LEA is to comply with the new and complex statutory requirement to select and implement evidence-based interventions in schools identified for comprehensive or targeted support and improvement; without such clarification, an LEA might have difficulty meeting this requirement. Moreover, these clarifications of the statutory requirements are necessary to reasonably ensure that the selected interventions will advance the statutory goals of improving student academic achievement and school success and closing achievement gaps and therefore fall squarely within the scope of section 1111 of the ESEA, as amended by the ESSA, consistent with section 1111(e). Accordingly, these requirements constitute an appropriate exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA.

Changes: We have revised §§ 200.21(d)(3)(iv) and 200.22(c)(4)(iv) to more clearly articulate the distinctions between the optional State authorities for lists of State-approved interventions and State-determined interventions, as described in § 200.23(c)(2)–(3), and their impact on the evidence-based interventions used in school support and improvement plans. Specifically, in the case of an exhaustive list of interventions established by the State consistent with § 200.23(c)(2), the intervention *must* be selected from that list, while in the case of a State establishing a non-exhaustive list, the intervention *may* be selected from that list. In addition, for comprehensive support and improvement plans, § 200.21(d)(3)(v) clarifies that the intervention may be one that is determined by the State, consistent with State law, as described in section 1111(d)(1)(3)(B)(ii) of the ESEA, as amended by the ESSA, and § 200.23(c)(3).

Equity and Resource Allocation: Comprehensive and Targeted Support and Improvement Plans

Comments: A number of commenters expressed support for § 200.21(d)(4) and § 200.22(c)(7), which require comprehensive support and improvement plans and targeted support and improvement plans for schools with low-performing subgroups that also must receive additional targeted support to identify and address resource inequities by reviewing certain LEA- and school-level resources. Other commenters requested that the Department eliminate these requirements or that it simply provide illustrative examples of resources that LEAs or schools might choose to review. Some commenters also suggested that such reviews might not be permissible under State law or questioned the Department's authority to require the review of any specific resources. One commenter specifically stated that the requirements conflicted with section 8527 of the ESEA, as amended by the ESSA.

Discussion: The Department appreciates the support for the resource review provisions in the proposed regulations. We believe that specifying certain types of resources for review is essential for ensuring that the reviews are meaningful and that they enable LEAs and schools to meet the statutory requirements for comprehensive support and improvement plans and targeted support and improvement plans for schools with low-performing subgroups schools that also must receive additional targeted support to identify and address resource inequities (ESEA section 1111(d)(1)(B)(iv), 1111(d)(2)(C)). We also believe that reviewing the particular resources in §§ 200.21(d)(4) and 200.22(c)(7) falls squarely within the scope of section 1111(d) of the ESEA, as amended by the ESSA, because it is necessary to the development of support and improvement plans that advance the statutory goals of improving student academic achievement and school success and closing educational achievement gaps. Further, the regulations ensure that these statutory requirements and purposes are met while minimizing burden on LEAs and schools by focusing on key data that States already will be collecting and reporting under the ESEA, as amended by the ESSA. Accordingly, we believe §§ 200.21(d)(4) and 200.22(c)(7) are a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA,

as amended by the ESSA, and do not violate section 1111(e).

Further, we disagree that the requirement to identify and address resource inequities by reviewing certain resources violates section 8527 of the ESEA, as amended by the ESSA. That provision states that nothing in the ESEA authorizes an officer or employee of the Federal Government ''to mandate, direct, or control'' a State, LEA, or school's allocation of State or local resources. As the regulations require the review of certain resources in order to identify and address resource inequities but do not require that such inequities be addressed in any particular way, they in no way ''mandate, direct, or control'' the allocation of State or local resources.

Changes: None.

Comments: A number of commenters recommended changes to the list of resources reviewed under §§ 200.21(d)(4)(i) and 200.22(c)(7)(i), including changes in required and optional elements of an LEA- or school-level resource review. Suggested elements included, for example, access to technology, music and art, and specialized instructional support personnel. Two commenters requested that we re-designate the examples in proposed §§ 200.21(d)(4)(ii)(A)–(C) and 200.22(c)(7)(ii)(A)–(C)—access advanced coursework, preschool programs, and instructional materials and technology—as required elements of resource reviews. One commenter also suggested adding to the list of required elements data that a State is required to report under section 1111(h)(1)(C)(viii) of the ESEA, as amended by the ESSA, which includes measures of school quality such as rates of suspensions and the number and percentage of students enrolled in preschool programs and accelerated coursework.

Discussion: We recognize that, as suggested by commenters, there are numerous examples of resources that contribute to positive educational outcomes that could be included in either a required or optional list in §§ 200.21(d)(4) and 200.22(c)(7), and we note that the final regulations would permit an LEA or school to add nearly any educational resource to its review that it deems important for supporting the effective implementation of school improvement plans.

We also believe, however, that the final regulations are more likely to promote meaningful resource reviews by focusing on a discrete list of required elements while continuing to reserve significant discretion to LEAs and schools in the conduct of such reviews. For this reason, we are revising the final regulations to make access to advanced coursework as well as access to both preschool and full-day kindergarten required elements of resource reviews. We also are adding as a required element access to specialized instructional support personnel, as defined in section 8101(47) of the ESEA, as amended by the ESSA. Specialized instructional support personnel such as school counselors are an important resource for creating and maintaining a safe and positive school climate and it is essential that students in all schools, but particularly low-performing schools, have access to those resources.

Finally, we decline to add school climate or suspension rates to the list of resources for review. Although these are important aspects of a school that should be evaluated and analyzed, they are not resources that are allocated. We encourage an LEA conducting a needs assessment pursuant to § 200.21(c) to examine a school's unmet needs with respect to school climate, including by reviewing data reported under section 1111(h)(1)(C)(viii)(I) of the ESEA, as amended by the ESSA, on rates of in-school suspensions, expulsions, school-related arrests, referrals to law enforcement, chronic absenteeism, and incidences of violence, including bullying and harassment.

Changes: We have revised the language in §§ 200.21(d)(4)(i) and 200.22(c)(7)(i) to require that an LEA, or school, include as part of its resource inequity review, in addition to per-pupil-expenditures and access to ineffective teachers, access to full-day kindergarten programs and preschool programs (in the case of an elementary school) as reported annually consistent with section 1111(h)(1)(C)(viii) of the ESEA, as amended by the ESSA, advanced coursework, including accelerated coursework as reported annually consistent with section 1111(h)(1)(C)(viii) of the ESEA, as amended by the ESSA, and specialized instructional support personnel, as defined in section 8101(47) of the ESEA, as amended by the ESSA, including school counselors, school social workers, school psychologists, other qualified professional personnel, and school librarians. We have also made conforming changes to § 200.21(d)(4)(ii) and § 200.22(c)(7)(ii).

Comments: One commenter requested that the Department expand the resource inequity review requirements to apply to schools identified for targeted support and improvement due to one or more consistently underperforming subgroups.

Discussion: The Department believes that requiring resource reviews for schools identified for targeted support and improvement would not be consistent with the ESEA, as amended by the ESSA; nevertheless, we strongly encourage those schools and their LEAs to include resource reviews as part of their targeted support and improvement plans.

Changes: None.

Comments: One commenter requested that the Department require that an LEA, or school, include, with respect to the required review in §§ 200.21(d)(4)(i) and 200.22(c)(7)(i) of per-pupil-expenditures and ineffective teachers, a review of budgeting and resource allocation.

Discussion: The Department believes that requiring a review of LEA and school-level budgeting and resource allocation would be inconsistent with section 1111(d) of the ESEA, as amended by the ESSA, which specifies that resource reviews ''may include'' budgeting and resource allocation decisions.

Changes: None.

Comments: Several commenters supported the requirements in § 200.21(d)(4) and § 200.22(c)(7) but noted concern about the elimination of the highly-qualified teacher requirements that existed under the ESEA, as amended by NCLB.

Discussion: The ESSA eliminated the highly-qualified teacher requirements in NCLB, and we therefore decline to include them.

Changes: None.

Timeline, Plan Approval, and Public Availability: Comprehensive and Targeted Support and Improvement Plans

Comments: Many commenters supported local discretion to use the first year following identification for targeted or comprehensive support and improvement as a planning year, as described in §§ 200.21(d)(5) and 200.22(c)(5).

Discussion: The Department appreciates the strong support for the allowance of a planning year; we agree that it will facilitate the development and implementation of targeted and comprehensive support and improvement plans consistent with the requirements of the ESEA, as amended by the ESSA. To further clarify that schools may begin implementation of targeted or comprehensive support and improvement plans during the planning year, we have made revisions to the proposed requirements in §§ 200.21 and 200.22.

Changes: We have revised the language in §§ 200.21(d)(5) and 200.22(c)(5) to clarify that a school identified for comprehensive or targeted

support and improvement may begin implementation of its approved plan during the planning year, or, at the latest, the first full day of the school year following the school year for which the school was identified.

Comments: One commenter suggested adding language that an LEA may identify a new principal, if applicable, during the planning year in order to encourage districts to thoughtfully plan for leadership transitions as early as possible.

Discussion: We decline to require the identification of a new principal during the planning year, the timing of which we believe is a local decision.

Changes: None.

Comments: Several commenters supported requiring LEAs, consistent with §§ 200.21(d)(6) and 200.22(d)(2), to make comprehensive and targeted support and improvement plans publicly available, including to parents consistent with the requirements for notice in § 200.21(b). Other commenters recommended additional requirements, including making a hard copy available or providing online access to the documents at the school for parents who do not have a home computer.

Discussion: We appreciate the support of commenters for our proposed regulations regarding the public availability, including to parents, of comprehensive and targeted support and improvement plans. We believe these requirements will ensure that plans are accessible to parents, including those with limited English proficiency needing language assistance. We encourage but do not require the plan be made available in a particular format (*e.g.,* via hardcopy or online) unless that is necessary to meet the requirement for an alternative format requested by a parent who is an individual with a disability.

Changes: None.

Comments: Several commenters opposed the proposed language in § 200.21(d)(7) requiring school approval of comprehensive support and improvement plans because they believe that LEAs should retain final approval authority to ensure that all schools in the district are treated equally and that no school has veto power over an improvement plan.

Discussion: The final regulations are consistent with section 1111(d)(1)(B)(v) of the ESEA, as amended by the ESSA, which requires that a comprehensive support and improvement plan be approved by the school, LEA and SEA.

Changes: None.

Comments: Several commenters requested clarification regarding the requirements in § 200.21(e)(1) regarding the State's responsibilities for comprehensive support and improvement plan approval and monitoring, with some commenters recommending defining the term ''periodically'' as it applies to review of plan implementation to mean at least annually. Similarly, several commenters requested clarification regarding the requirement in § 200.22(d) regarding the LEA's responsibilities for plan approval, in particular what it means to review and approve a targeted support and improvement plan ''in a timely manner.'' Other commenters stated that the review of improvement plans should include input from State Advisory Panels in special education.

Discussion: We do not believe it is necessary to further define the terms ''in a timely manner'' or ''periodically'' in these regulations, as we believe both States and LEAs should have discretion, consistent with the ESEA, as amended by the ESSA, to develop timelines related the development and implementation of comprehensive and targeted support and improvement plans, respectively, that reflect their needs and circumstances. We also note that these timelines will naturally be driven, in part, by the implementation timelines specified in these final regulations (*i.e.,* plans must be fully implemented no later than the first day of school in the year immediately following a planning year/the year for which identified).

Changes: None.

Exit Criteria: Comprehensive Support and Improvement Plans

Comments: Several commenters generally supported the requirements in § 200.21(f) for exit criteria for schools implementing comprehensive support and improvement plans. Several other commenters, however, opposed the proposed regulations on exit criteria, contending that the Department does not have the authority to promulgate those regulations, that the regulation violates the provision in section 1111(e)(1)(B)(iii)(VII) of the ESEA, as amended by the ESSA, which states that the Secretary may not prescribe exit criteria established by the State, and that the determination of appropriate exit criteria, as well as the actions that an LEA with a school that does not meet the exit criteria must take, should be determined by the State. More specifically, several commenters objected to the regulations on the basis that they would prevent a State from establishing exit criteria based on measures other than test scores or graduation rates. One commenter expressed concern that the exit criteria parameters in the proposed regulations were not sufficiently rigorous. Finally, a number of commenters requested that the Department remain silent on the State-established timeline for exit criteria.

Discussion: The Department appreciates the support for the requirements related to exit criteria. In response to the comments suggesting that the States should be permitted to determine exit criteria, the Department notes that the regulations in § 200.21(f) allow a State to establish its own exit criteria, requiring only that those exit criteria fall within two parameters: (1) That they require improvements in student outcomes; and (2) that a school that meets the exit criteria no longer meets the criteria for identification as a comprehensive support and improvement school.

Under these regulations, ''student outcomes'' are not limited to outcomes on statewide assessments. Accordingly, a State may establish exit criteria that are based on measures in addition to or other than test scores, such as, for example, improvements on any indicator in the accountability system, including a School Quality or Student Success indicator. States also have flexibility to determine what constitutes ''improvement'' on an indicator, and the Department encourages States in establishing these parameters to consider whether a school has sustained improvements and is likely to not be re-identified. We also believe that the regulations strike the proper balance between setting safeguards to ensure meaningful exit criteria and providing each State with ample flexibility to establish the exit criteria most appropriate for its State context. Further, we believe the regulations are consistent with section 1111(e)(1)(B)(iii)(VII) of the ESEA, as amended by the ESSA, because they do not prescribe exit criteria. Rather, the regulations set broad parameters around exit criteria to ensure that the criteria are linked with improved schools as opposed to, for example, arbitrary measures unrelated to student outcomes. A State may establish whatever exit criteria it believes are appropriate within those parameters such as, for example, improved performance on the School Quality or Student Success indicator or improvements in other student outcomes, as required under section 1111(d)(3) of the ESEA, as amended by the ESSA. Additionally, we believe that the regulations fall within the scope of, and are necessary to ensure compliance with, the requirements in section 1111(d)(3)(A)(i) of the ESEA, which

requires exit criteria be designed to ensure continued progress to improve student academic achievement and school success in the State. As such, we believe these requirements constitute a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, and do not violate section 1111(e) of the ESEA, as amended by the ESSA.

Additionally, given the balance struck by the regulations, the Department declines to specify more rigorous parameters for exit criteria in the final regulations. Further, we note that the regulatory provision specifying that the State-determined timeline for meeting the exit criteria may not exceed four years merely restates the statutory provision in section 1111(d)(3)(A)(i)(I) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: None.

Discussion: We have determined that the regulations could provide greater clarity regarding how a State determines that a school no longer meets the criteria for identification under § 200.19(a). Specifically, we believe that it is necessary to clarify that a State's exit criteria must ensure that a school no longer meets the specific criterion or criteria under which the school was identified, rather than all of the criteria under § 200.19(a) (*e.g.,* if a school was identified because it was among the lowest-performing five percent of title I schools in the State, the exit criteria need not require that the school improve its graduation rate).

Changes: We have modified the language in § 200.21(f)(1)(ii) to specify that a State's exit criteria must require that a school no longer meet the specific criteria under which the school was identified as a comprehensive support and improvement school.

Comments: One commenter expressed support for the requirement, in § 299.17(c)(2) of the proposed regulations, that a State make publicly available the exit criteria it establishes under § 200.21(f).

Discussion: The Department appreciates the support for this requirement, and believes it would be helpful to further clarify this requirement by adding it to § 200.21 in the final regulations; we believe a similar clarification is also helpful in § 200.22(f)(1) with regard to title I schools with low-performing subgroups of students identified for targeted support and improvement.

Changes: We have modified the language in §§ 200.21(f)(1) and 200.22(f)(1) to reiterate the requirement in § 299.17(c)(2) and (5) that a State must make publicly available its exit criteria for schools identified for comprehensive support and improvement and for schools with low-performing subgroups of students identified for targeted support and improvement.

Comments: One commenter noted that the term ''exit criteria'' could be called ''success criteria'' instead.

Discussion: We retain the proposed terminology in the final regulations for consistency with the ESEA, as amended by the ESSA, but note that a State may use whatever term it deems appropriate for its exit criteria as long as the criteria meet the requirements in § 200.21(f).

Changes: None.

Comments: One commenter asked for clarification on how the requirements in the regulations with respect to timeline for exiting interact with the timeline for schools currently implementing interventions under ESEA flexibility as well as what types of support and monitoring a State must provide to an LEA with a school that does not meet the exit criteria.

Discussion: The Department agrees that clarification on the issues raised by the commenter would be helpful, but intends to address both issues in non-regulatory guidance rather than the final regulations.

Changes: None.

Comments: Several commenters requested that the Department eliminate the requirement that an LEA conduct a new needs assessment for a school implementing a comprehensive support and improvement plan that does not meet the exit criteria within the State-determined number of years. Those commenters claimed that the requirement is duplicative, burdensome, and inconsistent with the statute.

Discussion: The Department believes that a new, high-quality needs assessment, conducted in partnership with stakeholders, is an essential foundation for the development and successful implementation of the amended comprehensive support and improvement plan required by § 200.21(f)(3). Additionally, the requirement is necessary to reasonably ensure compliance with sections 1111(d)(1)(B)(iii) and 1111(d)(3) of the ESEA, as amended by the ESSA, because an amended needs assessment is essential to identifying areas for which improvement is needed in a school that has failed, after a State-determined number of years, to meet the State-established exit criteria. For these reasons, we believe the regulation falls squarely within the scope of section 1111(d) of the ESEA, as amended by the ESSA, consistent with section 1111(e), and our rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and, thus, decline to eliminate this requirement.

Changes: None.

Comments: A number of commenters suggested changes to § 200.21(f)(3) with respect to the actions an LEA must take if a school identified for comprehensive support and improvement does not meet the exit criteria within a State-determined number of years. Specifically, these commenters requested clarification that the additional interventions that the LEA must implement in the school may replace or supplement the existing interventions and that the additional interventions must address the needs identified by the new needs assessment, regardless of the level of evidence supporting those interventions. Some of these commenters were concerned that the requirement in § 200.21(f)(3)(iii)(B) appeared to require all of the additional interventions in the amended plan to be supported by strong or moderate evidence. Finally, one commenter suggested requiring annual State review of the implementation of the amended comprehensive support and improvement plan.

Discussion: We agree with the suggestions to clarify that not all the additional interventions that an LEA implements as part of an amended comprehensive support and improvement plan for a school that fails to meet exit criteria must be evidence-based interventions supported by strong or moderate evidence and is revising the regulation to reflect this clarification. The Department believes that interventions with stronger evidence are more likely to lead to success and, therefore, will maintain the requirement that at least one of the interventions be supported by strong or moderate evidence. We further agree that an LEA may either replace or supplement existing interventions, as determined by the State, and that an LEA should, as part of its new needs assessment, carefully review whether the existing interventions have been successful at improving the achievement of its students, but believe the regulations already are clear on this point. Finally, the Department declines to amend the regulations to include annual State review of the implementation of amended comprehensive support and improvement plans because it believes that the need for additional monitoring and support for such schools is adequately addressed by the requirement in § 200.21(f)(5)(ii).

Changes: The Department has amended § 200.21(f)(3)(iii)(B) to require

that the additional interventions that an LEA with a school identified for comprehensive support and improvement that does not meet exit criteria must implement include one or more evidence-based interventions that are supported by strong or moderate evidence, but clarify that the amended plan may also include other rigorous interventions that are not supported by strong or moderate evidence.

Exit Criteria: Targeted Support and Improvement Plans

Comments: Several commenters supported generally the requirements in § 200.22(e) for exit criteria, including one who specifically supported the requirement that an LEA make the exit criteria publicly available. Several other commenters asserted that the Department does not have authority to set parameters around exit criteria or that either the exit criteria or the actions required for a school that does not meet the exit criteria should be determined by the State or LEA.

Discussion: The Department appreciates the support for the requirements related to exit criteria in the proposed regulations. We believe that these requirements fall squarely within the scope of, and are necessary to reasonably ensure compliance with the requirements in section 1111(d)(2)(B) of the ESEA, as amended by the ESSA, that schools identified for targeted support and improvement implement plans that improve student outcomes and that such plans result in additional action following unsuccessful implementation after a number of years. As such, we believe these requirements constitute a proper exercise of the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and do not violate section 1111(e) (see discussion of the Department's general rulemaking authority under the heading *Cross-Cutting Issues*). Further, the regulations reserve appropriate discretion for LEAs to determine their specific exit criteria for schools implementing targeted support and improvement plans.

Changes: None.

Comments: One commenter suggested requiring annual State review of the implementation of amended targeted support and improvement plans.

Discussion: The Department believes that requiring annual State review of the implementation of amended targeted support and improvement plans would be inconsistent with the ESEA, as amended by the ESSA, which gives LEAs primary responsibility for ensuring the effective implementation of targeted support and improvement plans. We also believes that the requirement in § 200.22(e)(2)(iii) that the LEA increase monitoring and support for school implementing amended targeted support and improvement plans partly addresses the commenter's concerns.

Changes: None.

Comments: A number of commenters recommended that the Department impose a maximum timeline for exit criteria for schools identified for targeted support and improvement due to one or more consistently underperforming subgroups. Two commenters suggested aligning the maximum timeline with the requirement that exit criteria for comprehensive support and improvement schools not exceed four years; another suggested requiring a cap of two years, noting that the exit criteria should be based on the school's progress against benchmark goals; and one commenter suggested that, if, after three years, a school has not met the exit criteria for targeted support and improvement, the State be required to identify it for comprehensive support and improvement.

Discussion: The Department appreciates the recommendations of the commenters, each of which is aimed at ensuring that LEAs and States take meaningful action, over time, to improve outcomes for students in consistently underperforming subgroups. However, the Department believes that these recommendations generally are not consistent with the requirements of the ESEA, as amended by the ESSA, which reserve significant discretion to LEAs in the development and implementation of targeted support and improvement plans. The Department also believes that because the ESEA, as amended by the ESSA, specifies the types of schools that must be identified for comprehensive support and improvement, it would not be appropriate to expand this definition to include schools identified for targeted support and improvement due to one or more consistently underperforming subgroups that fail to meet exit criteria. For these reasons, we believe that the regulations strike the proper balance between establishing safeguards to ensure meaningful exit criteria and providing each LEA with flexibility to establish the exit criteria most appropriate for its specific context, as well as more rigorous consequences for failure to meet those criteria.

Changes: None.

Comments: A number of commenters recommended that the Department require that States, rather than LEAs, establish exit criteria or otherwise eliminate the LEA's control over the exit criteria for schools identified for targeted support and improvement based on one or more consistently underperforming subgroups. These commenters were concerned that the LEA-established exit criteria may conflict with State policies, including the State's criteria for identifying consistently underperforming subgroups, may be inconsistent across the State, and may create burden for LEAs.

Discussion: The Department appreciates commenters' interest in having States establish exit criteria for this type of school. The regulation, however, is consistent with the statute, which specifically grants authority to establish exit criteria for these schools to LEAs (section 1111(d)(2)(B)(v) of the ESEA). We note that States have authority to issue rules, regulations, and policies related to title I of the ESEA, and may exercise that authority in accordance with the requirements in section 1603 of the statute. A State may use that authority to issue rules, regulations, or policies that establish parameters around LEA-established exit criteria.

Changes: None.

Comments: Several commenters recommended requiring a school identified for targeted support and improvement that does not meet its exit criteria to conduct a needs assessment.

Discussion: While we encourage States and LEAs to require a needs assessment as a prerequisite for all school improvement plans—whether initial or amended—we decline to add such a requirement to the final regulations because the ESEA, as amended by the ESSA, requires such needs assessments only for schools identified for comprehensive support and improvement.

Changes: None.

State Discretion for Certain High Schools

Comments: Several commenters supported proposed § 200.21(g)(1), under which a State may permit differentiated improvement activities as part of comprehensive support and improvement plan for certain high schools identified due to low graduation rates. A number of commenters recommended various clarifications, including specific terms used in the provision, such as ''differentiated improvement activities;'' the specific schools eligible for differentiated treatment; and the extent of the permitted differentiation, including examples of appropriate interventions.

Another commenter suggested that holding high schools serving significant populations of over-age and credit-deficient student accountable for meeting targets based on extended-time graduation rates would better serve these schools and their families than a different set of labels or interventions. One commenter recommended requiring States to provide a plan for how accountability will be maintained in these schools, including the calculation of extended-year adjusted cohort graduation rate for up to 7 years.

Discussion: We appreciate the support of some commenters for proposed § 200.21(g)(1) permitting differentiated activities in certain high schools identified for comprehensive support and improvement, and agree that additional clarity is needed regarding this flexibility. The intent of proposed § 200.21(g)(1) was to permit States discretion, consistent with section 1111(d)(1)(C)(i) of the ESEA, as amended by the ESSA, to allow differentiated improvement strategies in its comprehensive support and improvement plans for high schools with low graduation rates that predominantly serve students (1) returning to education after having exited secondary school without a regular high school diploma, or (2) who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, and not to simply forego implementation of improvement activities or otherwise reduce accountability in such schools, as is allowed for small high schools under proposed § 200.21(g)(2). We also note that LEAs may, and should, create differentiated improvement plans for such high schools identified for support and improvement that are based on the school's needs assessment and specifically designed to address identified needs. Other comments, such as concern about labels or recommendations for additional improvement plans, appear to overlook the fact that these schools are identified for comprehensive support and improvement and thus must develop and implement comprehensive support and improvement plans, though they may include differentiated improvement activities in such plans. We are revising §§ 200.21(d) and (g) to reflect these clarifications.

Changes: We have moved the language regarding differentiated improvement activities in any high school identified for comprehensive support and improvement due to a low graduation rate that predominantly serves students (1) returning to education after having exited secondary school without a regular high school diploma, or (2) who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements from § 200.21(g)(1) to 200.21(d)(3)(vi).

Comments: Some commenters supported the provision in § 200.21(g)(2) allowing an SEA to exempt a high school that is identified for comprehensive support and improvement based on having a low graduation rate from implementing required improvement activities if it has a total enrollment of less than 100 students. Several commenters requested clarification about some of the terms in § 200.21(g)(2), such as ''total enrollment'' and ''such a school''. A few commenters recommended requiring a justification for such exemptions in annual LEA report cards, while others called for notifying parents when identified schools do not implement improvement plans. Two commenters recommended that the Department clarify in guidance that these LEAs are still subject to all other reporting requirements. Other commenters expressed concern about permitting such exemptions for extended periods of time or stated that this flexibility is inappropriate for certain schools, such as schools that predominantly serve students with disabilities or schools serving students in prison or juvenile justice facilities.

Discussion: We appreciate the support some commenters provided for State discretion for certain small high schools identified for comprehensive support and improvement due to low graduation rates. We agree that the regulations should be clarified to ensure that this flexibility is provided only for small schools (with fewer than 100 students enrolled) that are identified for comprehensive support and improvement based on having a low graduation rate; small schools that are identified for other reasons must develop and implement a comprehensive support and improvement plan as required by the statute and regulations. However, we decline to include additional reporting and notice requirements in these final regulations, as the continued applicability of all reporting requirements in the statute and regulations will provide the transparency needed to promote accountability. We also believe that denying this flexibility to certain small schools, such as schools predominantly serving students with disabilities, would not be consistent with the ESEA, as amended by the ESSA, though we note that this flexibility may not be used to deprive these students of their rights under the IDEA, Section 504, and title II of the ADA.

Changes: We have revised § 200.21(g) to clarify that high schools identified for comprehensive support and improvement based on low graduation rate with a total enrollment of less than 100 students are the only high schools permitted to forgo implementation of improvement activities required by these regulations.

Public School Choice

Comments: Several commenters support the requirements in § 200.21(h) regarding public school choice, while others asserted that this subsection is not consistent with section 1111(d)(1)(D) of the ESEA, as amended by the ESSA. One of these commenters objected to requiring school districts that that are operating under a Federal desegregation order and wish to offer public school choice consistent with § 200.21(h) to obtain court approval for choice transfers, based on the belief that choice options should not interfere with the operation of desegregation plans. Another commenter objected to what the commenter appeared to believe is a requirement to offer public school choice, suggesting that such a requirement would negatively impact students that are homeless and/or transferring for a number of other reasons, including students that move mid-year and want to attend their new neighborhood school.

Discussion: An LEA is required to ''obtain court approval'' for transfers if it is unable to implement the choice provisions consistent with the desegregation plan, or where the governing orders specifically require authorization from the court. The Department anticipates that courts and responsible agencies will recognize the benefits of allowing students to transfer from schools identified as needing improvement and will grant amendments to desegregation orders permitting such transfers where they would not impede desegregation. We disagree with the commenter that believes the provision would have a negative impact on mobile students. An LEA may, but is not required to provide students with the option to transfer to another public school that is not identified for comprehensive improvement and support, and no student would be required to seek or accept such a transfer.

Changes: None.

Section 200.23 State Responsibilities To Support Continued Improvement

State Review of Available Resources

Comments: Several commenters strongly supported proposed § 200.23(a), which would require each State to periodically conduct a resource allocation review in each of its LEAs serving a significant number of schools identified for comprehensive support and improvement or targeted support and improvement. One commenter observed that resource inequities identified through such reviews could contribute to certain LEAs having a disproportionate number of schools identified for improvement, and that reducing such inequities could improve achievement for all students.

Discussion: The Department appreciates the support of these commenters for the proposed regulations and agrees that reducing inequitable resource allocation practices in LEAs and schools can help improve student achievement as well as other educational outcomes. Given the potential impact of these efforts, we are revising the final regulations to clarify that this periodic review considers the same resources that are reviewed by an LEA as part of comprehensive support and improvement plans for schools that are so identified. We are also revising the final regulations to further clarify that this periodic review considers ''resources available'' to emphasize that the review considers how allocation practices ultimately affect the availability of resources among LEAs and schools.

Changes: We have revised § 200.23(a) to require a State to periodically review ''resources available'' in LEAs with a significant number of percentage of schools identified for comprehensive or targeted support and improvement as compared to all other LEAs in the State, and in schools in those LEAs as compared to all other schools in the State, and to clarify that the resources included in this review must include the same resources an LEA reviews for purposes of a comprehensive support and improvement plan.

Comments: One commenter requested that the final regulations clarify the meaning of the term ''significant number of schools'' as used in proposed § 200.23. Another commenter recommended that the phrase be revised to read ''significant number or percentage of schools'' to avoid over-identification of large urban districts for additional State support.

Discussion: We decline to provide a more precise definition of the term ''significant number of schools'' because it may vary according to local circumstances, but we agree that adding ''or percentage'' to the term is a helpful clarification and are revising the final regulations accordingly.

Changes: We have revised the regulations to replace the term ''significant number of schools'' with the term ''significant number or percentage of schools'' throughout.

Comments: One commenter recommended requiring such reviews at least once every three years, rather than periodically, to encourage alignment of the reviews with needs assessments for schools identified for comprehensive support and improvement.

Discussion: We appreciate the commenter's intention of aligning resource reviews with school identification timelines, but decline to make the recommended change in recognition that States may need discretion to account for variations in State identification timelines as well as capacity to carry out required reviews.

Changes: None.

Comments: One commenter recommended that the Department provide more specific parameters around the resource allocation reviews required by proposed § 200.23(a), including the timeline for reviews, disaggregation of expenditures targeted to specific subgroups of students, an assessment of student needs, and the inclusion of all districts for comparison purposes. Another commenter recommended that in addition to examining resource allocation between LEAs and between schools, States also look at resource inequities between grades (*e.g.,* between preschool and kindergarten).

Discussion: The Department appreciates commenters' desire for more granular data and information as part of resource reviews, as well as interest in expanding the comparison categories, but generally declines to include additional parameters in the final regulations to avoid increasing State and local burdens in conducting the reviews. We are, however, revising the language in § 200.23(a) to clarify the entities to be used for comparison purposes in the review of available resources.

Changes: We have revised § 200.23(a) to specify that each State must, with respect to each LEA in the State serving a significant number or percentage of schools identified for comprehensive support and improvement or targeted support and improvement, periodically review resources available between such LEAs and all other LEAs in the State and between schools in those LEAs and all other schools in the State.

Comments: One commenter recommended revising proposed § 200.23(a) to include a requirement that States evaluate schools implementing comprehensive support and improvement plans to determine whether such schools are improving more quickly than schools with a comparable student population.

Discussion: We believe that adding an evaluation requirement to the resource review requirements in the final regulations would impose significant burden on States unrelated to the resource reviews required under section 1111(d)(3)(A)(ii) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter opposed the resource allocation reviews required by proposed § 200.23(a) because they would require States to review and potentially address teacher distribution issues related to disproportionate rates of ineffective, out-of-field, or inexperienced teachers in one or more LEAs or schools. The commenter also believes that the final regulations should not define ''resources'' for the purpose of the resource allocation reviews required by section 1111(d)(3)(A)(ii) of the ESEA, as amended by the ESSA.

Discussion: States, with respect to each LEA in the State serving a significant number or percentage of schools identified for comprehensive support and improvement or targeted support and improvement, will be required to review and take actions to address differences in rates of ineffective, out-of-field, or inexperienced teachers in LEAs and schools by § 299.18(c) of the final regulations and section 1111(g)(1)(B) of the ESEA, as amended by the ESSA; the resource reviews merely reinforce these actions by requiring States to periodically review educator data in the context of school improvement needs. We also believe that defining a minimum set of resources that must be reviewed supports effective State implementation of the required resource reviews while also reducing the burden of such reviews by highlighting readily available resource data collected in accordance with other requirements under the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter opposed the resource allocation reviews required by proposed § 200.23(a) on grounds that such reviews could lead to SEA efforts to override the authority of local school districts over their own budgets. The commenter expressed further concern that such SEA actions might not take

into account the local context for resource allocation decisions.

Discussion: The Department believes that the proposed language requiring State actions to address resource inequities ''to the extent practicable,'' which is retained in the final regulations, will encourage a collaborative approach by States and LEAs in responding to any identified resource inequities.

Changes: None.

Comments: One commenter opposed proposed § 200.23(a) because of what the commenter claimed to be the difficulty of disaggregating costs paid for with general categorical funding.

Discussion: The Department recognizes that disaggregating State and local expenditures may be challenging, but notes that States and LEAs must report per-pupil expenditures of Federal, State, and local funds annually under section 1111(h)(1)(C)(x) of the ESEA, as amended by the ESSA.

Changes: None.

State Technical Assistance

Comments: One commenter recommended that the final regulations include language encouraging States to include in the description of the technical assistance it will provide under proposed § 200.23(b) an explanation of how it will work with external partners with expertise in identifying or implementing school improvement strategies. The commenter believes that external organizations provide a ready resource that can help build State capacity to provide effective technical assistance to districts and schools. Another commenter similarly recommended the addition of language to proposed § 200.23(b)(3) regarding tools for implementing evidence-based interventions, including practices available through the Department's Regional Educational Laboratories and Comprehensive Assistance Centers.

Discussion: The Department agrees that external partners and resources can help States provide more effective technical assistance and other support to districts and schools, but declines to require or otherwise specify the use of such partners or resources in the final regulations. We will take these comments into consideration in developing non-regulatory guidance related to State-provided technical assistance.

Changes: None.

Comments: One commenter recommended revisions to proposed § 200.23(b) encouraging States to (1) provide guidance to districts on how to conduct a school-level needs assessment, with an emphasis on using assessment results to select evidence-based interventions; (2) promote the use of existing evidence-based intervention resources, including the Department's What Works Clearinghouse operated by the IES; and (3) develop a policy framework for sustainable school turnaround that includes additional resources, district-level reforms, tiered intervention strategies, stakeholder engagement, teacher and principal pipelines, and rigorous evaluation activities.

Discussion: The Department appreciates the commenter's interest in promoting more effective State support for school improvement, as well as the potential role of the What Works Clearinghouse in expanding the use of evidence-based interventions, but declines to require or otherwise specify additional State-level activities in this area in the final regulations. We will take these comments into consideration in developing non-regulatory guidance related to State-provided technical assistance.

Changes: None.

Comments: One commenter recommended revisions to proposed § 200.23(b) emphasizing that sustained school improvement requires (1) that evidence-based interventions selected by LEAs and schools are clearly connected to the findings of the needs assessment; (2) continuous monitoring of implementation, including through rapid-cycle impact evaluations; and (3) that States build the evidence base through piloting of interventions in areas where the evidence base is weak or no evidence exists.

Discussion: The Department appreciates the commenter's interest in promoting stronger State support for the use of evidence-based practices but declines to require or otherwise specify additional activities in this area in the final regulations. We believe it more appropriate to discuss these activities in non-regulatory guidance. We also note that § 200.21(d) requires a comprehensive support and improvement plan to include one or more evidence-based interventions that are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs identified in the needs assessment.

Changes: None.

Additional State Improvement Actions

Comments: One commenter stated that proposed § 200.23(c)(1), which provides examples of additional school-level improvement actions that a State may take in LEAs with a significant number of schools identified for comprehensive support and improvement that are not meeting exit criteria or a significant number of schools identified for targeted support and improvement, is inconsistent with section 1111(e)(1)(B)(iii)(VI) of the ESEA, as amended by the ESSA, which provides that nothing in the statute authorizes the Secretary, as a condition of approval of the State plan, to prescribe any specific school support and improvement strategies for use by States or LEAs. Two commenters recommended moving the specified interventions to non-regulatory guidance.

Discussion: The list of interventions in proposed § 200.23(c)(1) is illustrative only, and is intended to provide examples of the types of meaningful actions a State may take to initiate additional improvement in any LEA, or in any authorized public chartering agency, in a school identified for comprehensive support and improvement or targeted support and improvement that has failed to respond to other interventions. For this reason, we believe it is appropriate to provide examples of such actions in regulation rather than in non-regulatory guidance. The final regulations, like the proposed regulations, do not require a State to take any of these actions and thus in no way prescribe any specific LEA or school support or improvement strategies. Therefore, § 200.23(c)(1)is not inconsistent with section 1111(e)(1)(B)(iii)(VI) of the ESEA, as amended by the ESSA. We further note that the additional improvement actions contemplated by the statue clearly include actions at both the LEA and school levels. Consequently, we are revising the final regulations to include examples of LEA-level improvement action (including reducing the LEA's operational or budgetary autonomy; removing one or more schools from the jurisdiction of the LEA; or restructuring the LEA, including changing its governance or initiating State takeover of the LEA), as well as action a State might take with regard to an authorized public chartering agency.

Changes: We have revised § 200.23(c)(1) to include examples of improvement actions a State may take at the LEA level and examples of improvement actions in an authorized public chartering agency.

Comments: One commenter recommended that the final regulations give States flexibility to determine the improvement activities to be carried out under proposed § 200.23(c)(1). Another commenter recommended removal of the list of interventions in proposed § 200.23(c)(1) because it believes that

such a list may discourage the use of evidence-based interventions that would better address the improvement needs of the school identified through its needs assessment.

Discussion: The list of interventions in proposed § 200.23(c)(1) is intended to provide examples of the types of meaningful actions a State may take in a chronically low-performing school that has failed to respond to other interventions. The list is illustrative only, and we do not believe it will preclude or otherwise discourage States from considering other types of interventions in such schools, including evidence-based interventions that respond to schools' needs assessments. We are, however, revising the school leadership example to emphasize the importance of selecting new leadership with the skills and experience needed to turn around low-performing schools. We also are revising § 200.23(c) to clarify that a State may take the specified additional school improvement actions only to the extent that they are consistent with State law.

Changes: We have revised § 200.23(c) to clarify that the additional improvement actions taken by a State must be consistent with State law. We also have revised the replacing school leadership example in 200.23(c)(1) to emphasize the importance of replacing school leadership with leaders who are trained for, or have a record of, success in low-performing schools.

Comments: One commenter recommended revising proposed § 200.23(c)(1) to clarify that States may take additional improvement actions in LEAs with a significant number of schools that are both identified for targeted support and improvement and not meeting exit criteria. The commenter believes that, similar to the proposed parameters for LEAs with a significant number of schools identified for comprehensive support and improvement, LEAs with schools identified for targeted support and improvement should be given time for the schools to improve before State intervention may be triggered. Another commenter recommended that schools identified for targeted support and improvement not be subject to the interventions specified in proposed § 200.23(c)(1); this commenter believes that schools identified for targeted support and improvement that are not meeting exit criteria are addressed adequately by the requirement for amended improvement plans in proposed § 200.22(e)(2).

Discussion: We appreciate the first commenter's desire for consistent treatment of schools identified for comprehensive support and improvement and targeted support and improvement that may be subject to additional improvement action by the State under § 200.23(c)(1). However, the categories of schools to which additional improvement actions apply are specified by section 1111(d)(3)(B)(i) of the ESEA, as amended by the ESSA, and the Department does not have the discretion to modify these categories. Similar considerations apply to the concern expressed by the second commenter; schools identified for targeted support and improvement (in an LEA with a significant number of such schools) are potentially subject to additional improvement action under the ESEA, as amended by the ESSA, albeit at the discretion of the State.

Changes: None.

Comments: A few commenters opposed the language in proposed § 200.23(c)(1) authorizing a State to take additional improvement action in any authorized public chartering agency with a significant number of schools identified for comprehensive support and improvement that are not meeting exit criteria or a significant number of schools identified for targeted support and improvement. One commenter asserted that the proposed regulation confused the roles of charter authorizers and charter operators, noting that authorizers are limited to monitoring school performance and using their non-renewal and charter revocation authority to close low-performing schools, rather than providing support and intervention to such schools. The same commenter warned that the proposed regulation could encourage States to take actions regarding charter authorizers that are inconsistent with State charter school law. Another commenter emphasized that the statutory provision in section 1111(c)(5) of the ESEA, as amended by the ESSA, which requires ESEA accountability provisions to be implemented for charter schools in accordance with State charter school law, together with implementing regulations in proposed § 200.12, are sufficient to ensure strong accountability for public charter schools, and that proposed § 200.23(c)(1) would potentially lead to less rigorous accountability actions by subjecting low-performing public charter schools to improvement and intervention, rather than revocation and closure. This commenter further noted that the proposed regulations could create a disincentive for such agencies to serve high-need populations or restart low-performing traditional public schools for fear of reaching the ''significant number'' threshold that might trigger State intervention. Another commenter stated that the proposed application of additional State improvement actions to authorized public chartering agencies would not be consistent with the ESEA, as amended by the ESSA, which does not include any accountability provisions for such entities in part A of title I. One commenter expressed concern that the proposed regulations would encourage authorizing agencies to revoke the charters of any identified charter school in an LEA serving a significant number of identified schools, a decision that might not always be the best approach or consistent with the requirements of an individual charter.

Discussion: The Department appreciates the concerns expressed by these commenters, but continues to believe that authorized public chartering agencies should, consistent with State charter school law, be subject to the same improvement actions as similarly performing LEAs. However, we are revising the final regulations to emphasize that such actions must respect the unique status and structure of charter school arrangements under State charter school law.

Changes: We have revised § 200.23(c)(1) to clarify that any action to revoke or non-renew a school's charter must be taken in coordination with the applicable authorized public chartering agency and be consistent with the terms of the school's charter.

Comments: One commenter expressed concern that the language in proposed § 200.23(c)(1) regarding the revocation or non-renewal of a charter school's charter could be read as authorizing a closure of a charter school that would not be consistent with the school's charter. The commenter noted that, for example, the school's charter might call instead for restarting the schools under new governance or hiring a new charter school operator. For this reason the commenter recommended revised language emphasizing that any State-determined intervention under proposed § 200.23(c)(1) must be consistent with both the terms of the school's charter and State charter school law.

Discussion: We agree with the commenter's recommendation, and are revising the final regulations to clarify that any State-determined action in a charter school under § 200.23(c)(1) must respect the unique status and structure of charter school arrangements under both State charter school law and the terms of the school's charter.

Changes: We have revised § 200.23(c)(1) to clarify that any action to revoke or non-renew a school's

charter must be taken in coordination with the applicable authorized public chartering agency and be consistent with both State charter school law and the terms of the school's charter.

Comments: One commenter recommended the addition of expanded learning time strategies to the list of school-level improvement actions in proposed § 200.23(c)(1).

Discussion: We recognize that the use of expanded learning time strategies may be an important component of a school improvement plan but decline to make additions to the list of actions in § 200.23(c)(1), which is intended to be illustrative only and does not constrain a State from taking other actions such as those recommended by the commenter.

Changes: None.

Comments: Three commenters opposed the provision in proposed § 200.23(c)(2) permitting a State to establish an exhaustive list of State-approved, evidenced-based interventions for use in schools implementing comprehensive support and improvement or targeted support and improvement plans. Two of these commenters stated that this provision would limit local innovation in identifying and implementing evidence-based interventions, and noted that there is no statutory basis for limiting the evidence-based interventions available to an LEA. These commenters did not oppose a non-exhaustive list of State-approved, evidence-based interventions, but maintained that districts should be permitted to select and implement evidence-based interventions without restriction. One commenter supported what it described as the flexibility for States to establish exhaustive or non-exhaustive lists of evidence-based interventions for use in identified schools. Another commenter stated that the terms ''exhaustive'' and ''non-exhaustive'' could be confusing to stakeholders; for example, an ''exhaustive'' list could suggest either a complete compilation of all evidence-based interventions or an exclusive list of State-approved interventions that must be used by districts and schools. This commenter also encouraged the Department to clarify whether a State may adopt existing lists of evidence-based interventions rather than develop their own lists.

Discussion: The Department appreciates the concerns expressed by these commenters, but continues to believe that States should have the discretion to establish (or adopt) and approve an exhaustive list (*i.e.,* from which an LEA *must* choose) or a non-exhaustive list (*i.e.,* from which an LEA *may* choose) of interventions for use in schools implementing comprehensive or targeted support and improvement. This is not contrary to the ESEA or other regulatory requirements because it is permissible for States to create any such list and still requires that each identified school implement evidence-based interventions, consistent with the definition of evidence-based in title VIII of the ESEA.

Changes: None.

Comments: One commenter recommended that the Department specify the inclusion of community schools and extended learning opportunities in State lists of evidence-based practices under proposed §§ 200.23(c)(2) and (3). Another commenter requested that the Department highlight dropout prevention and recovery strategies, while a third commenter recommended the addition of school leadership programs and interventions as examples of evidence-based State-determined interventions in the final regulations.

Discussion: We decline to add specific categories of possible evidence-based interventions or strategies to the final regulations beyond the broad category of ''whole-school reform models.'' The purpose of the regulations in this area is to describe how States may create their own lists of evidence-based interventions or develop their own evidence-based interventions, and not to require or promote specific practices.

Changes: None.

Comments: One commenter recommended a range of changes to proposed § 200.23(c) aimed at supporting more effective use of evidence-based interventions, including requiring States to provide more information on the evidence associated with each State-approved intervention; periodic updates of State-approved lists of evidence-based interventions; and State-sponsored, rigorously evaluated pilots of interventions in areas for which there is no evidence base.

Discussion: The Department appreciates the commenter's interest in promoting more effective use of evidence-based practices but declines to require or otherwise specify additional State-level activities in this area in the final regulations. We believe such activities may be addressed more appropriately, taking into account varying needs and capacities across States, through non-regulatory guidance.[26]

Changes: None.

Comments: One commenter recommended replacing the term ''intervention'' with ''strategies'' when referring to whole-school improvement strategies in proposed § 200.23(c)(3).

Discussion: We believe these terms are largely interchangeable in the school improvement context and decline to make the recommended change.

Changes: None.

Comments: One commenter recommended revisions to proposed § 200.23 that would require that additional improvement actions, if taken by a State, in schools where students receive instruction primarily through a Native American language, including any State-approved evidence-based interventions and any State-determined, school-level improvement actions, be based on research in schools where the Native American language is the primary medium of education, be conducted in the school's particular Native American language of instruction, and not limit the preservation or use of Native American languages and their distinctive features.

Discussion: The Department appreciates the concerns of the commenter that any additional State improvement actions taken in a Native American language medium school reflect and respect the importance of the language of instruction in such schools. Although we agree that States should not take improvement action without taking into account the unique nature and characteristics of Native American language medium schools, we decline to add specific requirements for such schools to the final regulations. The regulations provide sufficient flexibility for States to take into consideration multiple factors. We also note that during the required State consultation with local tribes prior to submitting the State plan (see § 299.15), local tribes can provide input regarding these issues, and we hope that the State, LEA and local tribes will work together towards the best interests of the affected students.

Changes: None.

Comments: One commenter observed that the provisions regarding State-determined interventions and State-approved lists of evidence-based interventions in proposed § 200.23(c) appear inconsistent with other provisions in the ESEA, as amended by the ESSA, emphasizing local discretion to develop and implement improvement plans in schools identified for comprehensive support and improvement or targeted support and improvement.

Discussion: The final regulations, like the proposed regulations, reflect the

[26] See: *http://www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf.* Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments.

additional actions that States may take under the ESEA, as amended by the ESSA, to support meaningful and effective school improvement, particularly in LEAs with significant numbers of identified schools, including schools identified for comprehensive support and improvement that are not meeting exit criteria. Section 1111(d)(3) of the ESEA, as amended by the ESSA, recognizes that in such circumstances, local discretion over school improvement may not be working and thus it may be appropriate for a State to take a stronger role. Further, section 1111(d)(3)(B)(ii) specifically permits a State to establish alternative evidence-based, State-determined strategies that can be used in schools identified for comprehensive support and improvement, consistent with State law. The regulations give States flexibility to ''establish'' such strategies or interventions either by creating lists of State-approved, evidence-based interventions or by developing their own State-determined interventions. We are revising § 200.23(c)(3) to clarify the difference between these two approaches and to include the statutory authority for State-determined interventions.

Changes: We have revised § 200.23(c)(3) to clarify that this provision permits States to develop their own evidence-based interventions and to reference the authority for such action in section 1111(d)(3)(B)(ii) of the ESEA, as amended by the ESSA.

Comments: None.

Discussion: Proposed § 200.23(c)(4) allowed a State to request that LEAs submit to the State for review and approval the amended targeted support and improvement plan required for each school in the LEA that is identified for targeted support and improvement and not meeting exit criteria over an LEA-determined number of years. After further consideration, we determined that this language was confusing. If a State chooses to conduct this review, we believe the State should be able to require an LEA to submit an amended plan for review and approval.

Changes: We have revised § 200.23(c)(4) to permit a State to require, rather than request, that an LEA submit to the State for review and approval the amended targeted support and improvement plan for each school that is required to develop such a plan under 200.22(e)(2)(i).

Section 200.24 Resources To Support Continued Improvement

LEA Application

Comments: Several commenters expressed support for the LEA application requirements in proposed § 200.24(b). One commenter supported the requirement for an assurance that each school an LEA proposes to serve with section 1003 school improvement funds will receive all of the State and local funds it would have otherwise received; this commenter also requested clarification on accountability regarding the use of funds awarded under section 1003.

Discussion: The Department appreciates the commenters' support of the requirements for LEA applications for school improvement funds. We believe any further clarification on accountability regarding the use of funds under section 1003 is more appropriate for non-regulatory guidance or technical assistance.

Changes: None.

Comments: A few commenters expressed confusion regarding proposed § 200.24(b)(1)–(2), and asked the Department to clarify that an LEA would not have to determine the interventions it will implement in a school before conducting a needs assessment and developing a plan on the basis of that assessment.

Discussion: In order to submit an application that meets all requirements, an LEA will have to conduct its needs assessment and determine the evidence-based interventions that best address the needs identified before submitting its application. We acknowledge that, depending on the timing of a State's process for awarding section 1003 funds, it could be difficult for an LEA to complete the necessary processes prior to submitting its application. Given the various timelines and procedures in place in different States, however, we decline to modify the regulations to dictate a specific timeline for allocating section 1003 funds. States should consider the general school improvement requirements, including the requirements to complete a needs assessment and identify evidence-based interventions based on that assessment, and the application process and timeline for funds under section 1003.

Changes: None.

Comments: A number of commenters recommended revisions to the LEA application provisions in the proposed regulations, including requiring to describe that each school will implement one or more evidence-based interventions based on strong, moderate, or promising evidence; requiring a demonstration that selected interventions address the results of the school's needs assessment; requiring that interventions are based on the strongest evidence available; and requiring a description of how the LEA will conduct the needs assessment; and requiring a description of the qualifications of any external partners.

Discussion: We believe the application requirements in § 200.24(b), combined with the separate but related requirements for comprehensive support and improvement plans in § 200.21, largely address the concerns of commenters while also striking the right balance between ensuring appropriate accountability for the effective use of section 1003 funds and recognizing State and local discretion in developing school improvement processes that address local needs and circumstances. Consequently, we decline to include additional application requirements in these final regulations.

Changes: None.

Comments: One commenter suggested that we require a description of the rigorous review process an LEA will use for all external service providers, not just those with which the LEA will partner for school improvement activities. This commenter further recommended that LEAs include in their applications information on their timelines and metrics for evaluating external providers, and that the regulations permit pay-for-performance contracts with external providers.

Discussion: We believe it is beyond the scope of § 200.24 to expand the requirements for review of external providers to cover all external providers, and not just those supporting school improvement projects funded through section 1003 of the ESEA, as amended by the ESSA. We further believe that other requirements related to external providers proposed by commenters, including the use of pay-for-performance contracts, are best left to the discretion of States and LEAs, most of which already have similar requirements in place based on their experience in implementing the supplemental educational services requirements of the ESEA, as amended by the NCLB.

Changes: None.

Comments: One commenter requested that the regulations require a rigorous review process of the interventions to be implemented rather than of the external provider that may help carry out the activities. Another commenter suggested that the LEA's application should describe how it will support schools in the continuous monitoring, implementation, and evaluation of

interventions to ensure that any necessary adjustments are made in a timely fashion.

Discussion: Under § 200.24(d)(1)(iii), States must evaluate the use of funds under section 1003, including the impact of evidence-based interventions on student outcomes or other related outcomes and must disseminate the results of these efforts. Additionally, in the LEA application, an LEA must describe its plan to monitor each school for which the LEA receives school improvement funds, which may include reviewing both the implementation and impact of the selected interventions. Given these requirements, the Department declines to make any changes in response to these comments.

Changes: None.

Allocation of School Improvement Funds to LEAs

Comments: Several commenters requested that the Department clarify that a State may distribute school improvement funds through a combination of formula and competitive grants. Another commenter, however, recommended that funding for school improvement be based on a formula designed with input from stakeholders, rather than through a competitive process.

Discussion: Section 1003(b)(1)(A) of the ESEA, as amended by the ESSA, expressly permits States to make school improvement grants to LEAs on a formula or competitive basis. Accordingly, there is no need for the regulations to clarify that school improvement funds may be distributed through a combination of formula and competitive grants, and the Department lacks the authority to remove this statutory flexibility. For States that elect to distribute school improvement funds solely through a formula, nothing in the statute or the final regulations prohibits them from seeking stakeholder input on that formula.

Changes: None.

Comments: A couple of commenters requested that the Department clarify whether the proposed minimum grant size in § 200.24(c)(2)(ii) is annual or cumulative for schools identified for comprehensive and targeted support and improvement.

Discussion: The recommended minimum grant sizes of $500,000 and $50,000 in the regulations for each school identified for comprehensive or targeted support and improvement, respectively, are annual. The Department does not believe that additional regulatory language is needed to clarify this point. We note, however, that while these are the recommended grant sizes, the general requirement is for States to make awards of sufficient size to help LEAs effectively implement all requirements of a support and improvement plan developed under § 200.21 or § 200.22 of the final regulations, including selected evidence-based interventions.

Changes: None.

Comments: A number of commenters provided feedback on the proposed minimum grant sizes for comprehensive and targeted support schools in § 200.24(c)(2)(ii). Many of these commenters opposed the proposed minimum grant size, or any specific minimum grant size, noting that the Department should leave it to the States to decide the size of the grant. Those commenters stated that the proposed minimum grant sizes in the regulations are arbitrary, reduce flexibility, result in inefficiency, and do not take into account student populations or the unique needs of each school.

Several commenters stated that the minimum grant sizes are inconsistent with the statutory provisions allowing the State to establish the method to allocate the funds and requiring the grants to be of sufficient size to enable an LEA to effectively implement improvement activities. One commenter stated that the minimum grant size requirement assumes that additional funding is the key to successful school improvement, while other commenters suggested that many low-performing or rural schools may struggle to spend such significant amounts of funding.

Several commenters also noted that for some States, requiring awards of at least $500,000 to schools identified for comprehensive support and improvement would make it impossible to serve all such schools, or to make any awards to schools identified for targeted support and improvement. On the other hand, one commenter suggested that the proposed $50,000 minimum award for targeted support and improvement schools might not be sufficient to prevent such schools from ultimately becoming comprehensive support and improvement schools. Another commenter recommended different minimum award sizes, suggesting $30,000 for targeted support schools and $100,000 for comprehensive support schools, and suggested that rather than requiring the LEA's application demonstrate that a smaller award is appropriate, that the LEA's application must demonstrate that a larger award is appropriate. A few commenters also opposed requiring LEAs to justify awards below the proposed minimum award sizes.

Finally, several commenters recommended alternatives to regulating minimum grant sizes, including allowing States to propose their own minimum grant sizes or to simply base award sizes on such factors as the school size, the needs of students, and the interventions to be implemented.

Discussion: The minimum grant sizes required for school improvement awards under section 1003 of the ESEA, as amended by the ESSA, are not intended to limit States and LEAs from recognizing differences among schools, but rather to ensure that the grants LEAs receive to support schools identified for comprehensive and targeted support and improvement are of sufficient size to support effective implementation of evidence-based interventions and improve student outcomes. For example, the much higher minimum grant size for comprehensive support schools is intended to support the broad, fundamental, whole-school reforms that are consistent with both the purpose and requirements of comprehensive support and improvement plans under the ESEA, as amended by the ESSA. The statute and regulations recognize diversity among schools by requiring each State to give priority in awarding funds to LEAs with the greatest need for such funds and the strongest commitment to using funds to improve student outcomes—priorities that permit States to take into account such factors as school size, student needs, and selected interventions when making section 1003 awards that exceed minimum grant sizes. We also believe that because the regulations already include flexibility for States to make smaller grants, there is no need to either modify the proposed minimum grant sizes or create alternative methods that States might use to determine section 1003 grant sizes. For these reasons, we are retaining minimum award sizes for section 1003 grants in the final regulations. However, we are revising the regulations to specifically incorporate some of the factors suggested by commenters that may justify awards below the $500,000 and $50,000 minimum grant sizes.

Changes: We have revised § 200.24(c)(2)(ii) to clarify that the characteristics a State must consider in choosing to award a grant that is less than the minimum grant size include enrollment, identified needs, selected evidence-based interventions, and other relevant factors described in the LEA's application on behalf of the school.

Comments: One commenter stated that, provided there is not an increase in title I funding and in the absence of a ''hold harmless'' provision for the

school improvement fund set-aside taken by the SEA, many LEAs may actually see a decrease in the amount of funds they receive for school improvement. The commenter advocated for the use of all school improvement funds at the local level, rather than the SEA level, and recommended that all minimum grant sizes be removed so States can make adjustments to award sizes based on title I appropriations.

Discussion: This commenter appears to be concerned that in some cases, the larger State-level school improvement reservation required by section 1003(a) of the ESEA, as amended by the ESSA, could reduce an LEA's regular title I, part A allocation below the amount it received in the prior year. Further, the commenter appears to recommend that some portion of section 1003 funds (including the State share of school improvement funding), rather than being used to support school improvement, should be used to compensate or ''restore'' regular LEA title I, part A allocations. This recommendation is wholly inconsistent with the requirements of the ESEA, as amended by the ESSA, which requires section 1003 funds to be used solely for school improvement activities, and not to supplement regular title I, part A allocations.

Changes: None.

State Responsibilities: Greatest Need and Strongest Commitment; Requirement To Evaluate Efforts; Renewing Grants

Comments: A few commenters recommended that the Department eliminate proposed § 200.24(c)(4)(i), which requires that a State award funds to LEAs to serve schools identified for comprehensive support and improvement ahead of those identified for targeted support and improvement. Some of these commenters noted that section 1003 of the ESEA, as amended by the ESSA, does not distinguish between comprehensive and targeted support and improvement schools. Another commenter stated that the requirement to serve schools identified for comprehensive support and improvement before schools identified for targeted support and improvement unduly limits States' and LEAs' ability to allocate resources to best meet the needs of their schools. Several commenters stated that LEAs should determine which comprehensive or targeted support and improvement schools receive funding when there are insufficient funds to award a grant of sufficient size to each LEA that submits an approvable application. Commenters were particularly concerned that, under the proposed regulations, no targeted support and improvement schools would ever receive funding due to the minimum grant award requirements.

Discussion: The Department appreciates the commenters' concern that schools identified for targeted support and improvement may not always receive funding under section 1003 of the ESEA, as amended by the ESSA. However, section 1003 of the ESEA, as amended by the ESSA, requires States to identify schools with the greatest need. We believe that schools identified for comprehensive support and improvement are the schools with the greatest need because they are the lowest-performing schools in the State.

Although we strongly agree that schools with low-performing and consistently underperforming subgroups need additional support, including additional fiscal resources to do so, we recognize that resources under section 1003 are limited and are therefore requiring that States focus those funds on the lowest performing schools overall. While LEAs have the discretion to determine which comprehensive support and improvement schools they serve first, it would be inconsistent with the statute to serve targeted support schools first.

Changes: None.

Comments: One commenter stated that States should take into account the size and characteristics of the student population that will be served, in addition to ''greatest need.''

Discussion: Although the Department declines to make any changes in response to this comment, the required factors in proposed § 200.24(c)(4)(ii) are minimum requirements. Thus, a State may include additional factors when determining greatest need, such as the characteristics of the student population, to the extent they are consistent with the statute and regulations.

Changes: None.

Comments: One commenter recommended that States give preference to LEAs that have (1) invested their own resources in school improvement, (2) selected evidence-based interventions that best address their needs assessments, (3) plans to monitor and evaluate programs to promote continuous improvement, and (4) demonstrated a commitment to using evidence.

Discussion: We believe most of the factors recommended as priorities by the commenter reflect existing requirements for improvement plans under the ESEA, as amended by the ESSA, and thus would not support meaningful differentiation among applicants. The exception, which is the extent to which an LEA has invested its own resources in school improvement, potentially excludes many high-poverty LEAs with few resources of their own but great need for additional school improvement funding. Consequently, we decline to modify the priorities included in the final regulation, though we note that States may include additional factors beyond those in proposed § 200.24(c)(4), to the extent that they are consistent with the statute and regulations.

Changes: None.

Comments: A few commenters stated that the regulations establishing the factors a State must consider in determining which LEAs demonstrate the ''greatest need'' for school improvement funds and the ''strongest commitment'' to use those funds to improve academic achievement and student outcomes in the lowest-performing schools exceed the Department's authority, or impose an unnecessary burden on SEAs or LEAs. These commenters stated that these determinations should be left to States, and suggested including the factors listed in the regulations as examples, rather than requirements, of how a State might make these determinations. A couple of commenters opposed particular factors for consideration, including resource allocation among LEAs and current academic achievement, with a couple of these commenters asserting that the requirement to look at resource allocation is contrary to the statute. One of these commenters also asserted that, through these regulations, the Department was attempting to influence the allocation of State and local funds, which the commenter believed to be prohibited by section 8527(a) of the ESEA, as amended by the ESSA.

Discussion: We disagree with the comments asserting that these regulations exceed the Department's authority. Section 1003(f) of the ESEA, as amended by the ESSA, requires a State, in allocating section 1003 school improvement funds, to give priority to LEAs that ''demonstrate the greatest need for such funds, as determined by the State'' and that ''demonstrate the strongest commitment to using [such] funds . . . to enable the lowest-performing schools to improve student achievement and student outcomes.'' The statute, however, does not clearly define the terms ''greatest need'' or ''strongest commitment.'' We believe the regulations are necessary to clarify the statutory terms and to ensure that States

meet these statutory requirements in a way that advances the purpose of section 1111(d)(1) and (2) as well as the overall purpose of title I—to improve student outcomes and close educational achievement gaps. As such, we believe these requirements fall squarely within the scope of title I, part A of the statute as well as the Secretary's rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, and do not violate section 1111(e) (see discussion of the Department's rulemaking authority under the heading *Cross-Cutting Issues*). Further, we believe that the requirements strike the proper balance between ensuring compliance with these key provisions of the statute while maintaining States' authority to make determinations regarding the award of school improvement funds. We do not agree with commenters that these requirements add new or unnecessary burden to States and LEAs because States and LEAs must meet these requirements; the regulations clarify how they must do so.

Further, we disagree that the requirements in § 200.24(c)(4)(ii) violate section 8527 of the ESEA, as amended by the ESSA. That provision states that nothing in the ESEA authorizes an officer or employee of the Federal Government ''to mandate, direct, or control'' a State, LEA, or school's allocation of State or local resources. As the requirements in § 200.24(c)(4)(ii) simply establish the factors a State must consider in determining how to prioritize awards of Federal school improvement funds, it in no way ''mandates, directs, or controls'' the allocation of State or local resources.

Changes: None.

Comments: Several commenters supported the requirement that a State consider, in determining strongest commitment, the proposed use of evidence-based interventions supported by the strongest level of evidence. One commenter recommended giving priority to an LEA that maximizes the use of evidence-based interventions in all appropriate aspects of its improvement plan, while another commenter recommended that the State consider the degree to which the LEA maximizes the use of evidence-based interventions supported by evidence that is both rigorous and relevant to the problems to be addressed.

Discussion: We agree with commenters that it is not only the rigor of the evidence supporting interventions that should be considered, but also whether the interventions to be implemented address the full scope of problems to be addressed. Thus, we are revising § 200.24(c)(4)(iii)(A) to require that a State consider, in determining strongest commitment, the proposed use of evidence-based interventions and whether they are sufficient to support the school in making progress toward meeting the exit criteria under §§ 200.21 or 200.22.

Changes: We have revised § 200.24(c)(4)(iii)(A) to require that a State consider, in determining strongest commitment, not only the proposed use of evidence-based interventions that are supported by the strongest level of evidence available, but also whether the evidence-based interventions are sufficient to support the school in making progress toward meeting exit criteria under §§ 200.21 or 200.22.

Comments: One commenter opposed § 200.24(c)(4)(iii)(A), asserting that this provision requires levels of evidence not required by the statute and which may impose financial burdens on LEAs that must conduct their own studies to meet the required evidence levels.

Discussion: Section 200.24(c)(4)(iii)(A) is consistent with section 8101(21)(B) of the ESEA, as amended by the ESSA, which requires that the activities and strategies funded under section 1003 of the ESEA meet the requirements for strong, moderate, or promising evidence under section 8101(21)(A). Further, the regulations do not limit the award of section 1003 funds to an applicant implementing interventions at a specific evidence level, nor do they require LEAs to expend their own funds to conduct studies. States may support LEAs in conducting or reviewing existing studies, and States and LEAs may use existing sources of studies, including the What Works Clearinghouse.

Changes: None.

Comments: Several commenters supported the inclusion of family and community engagement in the proposed regulations as a factor a State must consider in determining strongest commitment. One commenter also encouraged a greater allocation of resources for family and community engagement.

Discussion: The Department appreciates the support of commenters for this provision. We note that LEAs have the flexibility to spend as much as is reasonable and necessary for family and community engagement under section 1003, and thus, decline to address this issue in the final regulations.

Changes: None.

Comments: One commenter suggested that the regulations include a commitment to delivering a well-rounded education for all students in proposed § 200.24(c)(4)(iii) as a factor to be considered in determining strongest commitment.

Discussion: The Department agrees that access to a well-rounded education is a key goal supported by the ESEA, as amended by the ESSA, but notes that an emphasis on a well-rounded education may not be consistent with the requirements of comprehensive and targeted support and improvement plans, which generally must focus on the specific academic needs of students that led to identification. For this reason, we decline to make changes in response to this comment.

Changes: None.

Comments: One commenter requested that the Department strike or clarify the requirement in § 200.24(d)(2)(ii) that if a State, using funds under section 1003, directly provides for school improvement activities or arranges for their provision through an external provider that such a provider have a ''record of success.''

Discussion: We believe it is essential that a State directly providing these services through an external provider ensure that such a provider has a record of success in helping LEAs and schools. We also believe that each State should have flexibility in determining whether a provider has a record of success, the criteria for which may vary depending on the services and assistance that the provider will offer, and decline to constrain this flexibility through any changes to the final regulations.

Changes: None.

Comments: A few commenters supported the focus in § 200.24(d) on the evaluation and dissemination of findings on the impact of evidence-based interventions funded with section 1003 funds. Several commenters encouraged the Department to expand this evaluation requirement to include studying the implementation of the evidence-based interventions, not just the impact of such interventions. Another commenter recommended revising proposed § 200.24(d)(1)(iii) to require that States disseminate results of their evaluation efforts not only to LEAs with schools identified under § 200.19, but also to all LEAs in the State.

Discussion: The Department appreciates commenters' support of the evaluation and dissemination provisions for evidence-based interventions funded by section 1003. These provisions are intended to strike a balance between the need to build the evidence base on school improvement interventions and the recognition that many States may have limited resources and capacity to carry out such work;

consequently, we decline to add to these requirements.

Changes: None.

Comments: A few commenters objected to the regulations making annual renewal of section 1003 school improvement awards contingent on a determination that a funded school is making progress on a State's goals and indicators. One commenter suggested clarifying the definition of ''progress'' by looking at data from the School Improvement Grants program, while another recommended the addition of examples of leading indicators that might be used to demonstrate progress.

Discussion: The Department appreciates these comments and understands that the process of improvement in a low-performing school can take several years and requires a plan for sustainability, consistent with the statutory acknowledgement that schools may need a grant for up to four years. Under the statute and regulations, the State defines the long-term goals and measurements of progress and determines how much progress is sufficient to support renewing an LEA's school improvement grant. For example, the State could set growth goals on the indicator or measure that resulted in the schools' identification, either for the all students group or particular subgroups. We believe this flexibility, in combination with the regulations, strikes the right balance between providing appropriate support for school improvement efforts and ensuring accountability for the effective expenditure of taxpayer funds. Therefore, the Department declines to make changes in response to these comments, and believes that any further clarification would be provided more appropriately through non-regulatory guidance.

Changes: None.

Comments: None.

Discussion: In reviewing the proposed regulations, the Department believes it is helpful to clarify what States will be required to submit in their title I State plans under section 1111 of the ESEA, as amended by the ESSA, to ensure that States are fulfilling their responsibilities under § 200.24(d). While proposed § 200.12 required that each State plan must include information about the State's process for ensuring development and implementation of school improvement plans consistent with the requirements of § 200.24, it will be more helpful for States if greater specificity regarding the required information is described in § 200.24. As § 200.24(d) includes five specific State responsibilities regarding funds under section 1003 of the ESEA, as amended by the ESSA, we are revising the final regulations to specify that a State must describe how it will fulfill these responsibilities in its State plan.

Changes: We have revised § 200.24(d) to clarify that a State must describe how it will meet the requirements pertaining to State responsibilities for funds under section 1003 of the ESEA, as amended by the ESSA.

Eligibility for School Improvement Funds

Comments: One commenter stated that before the passage of the ESSA, States were able to identify schools for supports if they were title I eligible. However, the commenter stated that under the proposed regulations, States are no longer afforded that option. Similarly, another commenter stated that the regulations are not clear that any school identified for comprehensive or targeted support and improvement is eligible for school improvement funding, regardless of title I status. This commenter recommended including language in the regulations stating that any school that is identified for comprehensive or targeted support under section 1111(d) of the ESEA, as amended by the ESSA, should be eligible for funding under section 1003(a), regardless of whether such school participates, or is eligible to participate, under title I.

Discussion: The relationship between title I status and eligibility for school improvement support has changed under the ESEA, as amended by the ESSA, and section 1003(b)(1)(A) of the ESEA is requires that any school that is identified for comprehensive or targeted support and improvement is eligible for school improvement funding under section 1003. Section 200.19 of the regulations clearly identifies which schools must be identified for comprehensive or targeted support and improvement, clarifying which categories of schools include title I and non-title I schools. Section 200.24(a) reiterates the statutory requirement that any schools meeting the statutory definition of comprehensive or targeted support and improvement are eligible for funds under section 1003. Therefore, we decline to add additional regulatory language to § 200.24 to this point.

Changes: None.

Other Reporting Requirements

Comments: A few commenters recommended that each State make publicly available on its State report card a list of LEAs and schools eligible for school improvement funds that did not receive them, due to insufficient funds at the State level.

Discussion: While the information requested by commenters is available on State report cards (which must include all schools identified for comprehensive or targeted support and improvement—and thus eligible for school improvement funding—and those receiving school improvement funds), insufficient funding is not the only reason that some eligible schools might not receive funding. Any State that implements the statutory priorities for targeting school improvement funds, ensures that each grant is of sufficient size to support full and effective implementation of the evidence-based interventions selected by each grantee, and generally adheres to minimum grant size requirements is unlikely to have sufficient resources under section 1003 of the ESEA, as amended by the ESSA, to award a grant to each LEA such that every identified school receives funding. In addition, not every LEA with one or more eligible schools is likely to apply for section 1003 funds, particularly if the State implements a rigorous application process consistent with the requirements of the ESEA, as amended by the ESSA, and applicable regulations.

Changes: None.

Specific Uses of School Improvement Funds

Comments: Several commenters asked the Department to clarify that specific uses of funds are permissible under section 1003 of the ESEA, as amended by the ESSA, including: Expansion of access to high-quality, developmentally appropriate early education; the creation of new charter schools to serve students enrolled in schools identified for comprehensive support and improvement, and other students in the local community and low-performing schools; and summer learning and enrichment activities.

Discussion: The use of funds provided under section 1003 of the ESEA, as amended by the ESSA, generally is governed by the requirements for comprehensive or targeted support and improvement plans in §§ 200.21 and 200.22, as well as the evidence requirements in section 8101(21)(B) of the ESEA, as amended by the ESSA. Consequently, the uses of funds proposed by the commenters would be allowable only as part of such improvement plans, thus it would be potentially misleading and inconsistent with the ESEA, as amended by the ESSA, to specify particular uses of section 1003 funds outside of those plans.

Changes: None.

Comments: One commenter requested that the Department specify that Parent Training and Information Centers may be used as a resource for improvement activities.

Discussion: The Department believes that it would be more appropriate to identify the wide range of resources that States and LEAs could enlist in support of school improvement activities, including Parent Training and Information Centers, through non-regulatory guidance and other technical assistance than in these final regulations.

Changes: None.

Other Comments on School Improvement Funds

Comments: One commenter requested that the Department clarify whether several schools could share a single allocation of funds for comprehensive and targeted support and improvement if they have similar challenges and are willing to undertake collaborative projects to develop and implement intervention strategies. Similarly, another commenter requested allowing States to combine school-level allocations in a zone-approach to managing turnaround of two or more schools identified for improvement.

Discussion: The Department appreciates these comments and the creative approaches to effectively use limited funds. However, the Department's interpretation of section 1003 of the ESEA, as amended by the ESSA, is that a district must apply for funds on behalf of one or more specific schools to ensure that each application meets all of the requirements with respect to that school. Even though each application must be separate, schools and LEAs may choose to collaborate as they complete the applications and may determine that it is appropriate in some cases to share certain resources as they implement their interventions such as, for example, technical assistance providers, professional development resources, or instructional coaches. For these reasons, the Department declines to make any changes in response to these comments.

Changes: None.

Comments: One commenter expressed general opposition to the reporting requirements in proposed § 200.24(e) and recommended removing them because they generally opposed data collection and reporting.

Discussion: Subsection 200.24(e) merely incorporates into regulation the reporting requirements related to section 1003 funds found in section 1111(h)(1) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: One commenter recommended adding a new provision to proposed § 200.24 that would require each State and LEA involved in the allocation of funds under section 1003(a) of the ESEA, as amended by the ESSA, to assure that LEA applications on behalf of schools, including charter schools, serving students primarily instructed through a Native Language instruction program include provisions that improvement support will be in the Native American language. The commenter also recommended that the LEA assure the selected interventions: (1) Include evidence-based interventions that are conducted through a Native American language and which are based on evidence that was obtained through research in a school conducted primarily through a Native American language; (2) do not limit the preservation or use of Native American languages; and (3) are specific to the specific Native American language of instruction and its distinctive features. Finally, the commenter recommended that the State and LEA assure that external partners of an LEA include staff fully proficient in the Native American language used in the school receiving support.

Discussion: The Department believes that the existing requirements for school improvement plans, including such elements as the needs assessment required for comprehensive support and improvement schools, stakeholder consultation requirements, and the selection of evidence-based interventions are sufficient to address the concerns of the commenter. For example, one consideration in selecting appropriate evidence-based interventions is determining whether the research supporting the effectiveness of the intervention was collected based on a population that overlaps with the population of students to be served in the identified school. For these reasons, the Department declines to make any changes in response to this comment.

Changes: None.

Comments: One commenter asked that the Department clarify that the term ''intervention'' is a reference to schoolwide improvement strategies for improving student outcomes, rather than individual-level student interventions.

Discussion: We believe that the term ''intervention'' reasonably means different things in different contexts. While ''intervention'' could refer to a whole-school reform strategy, it also could mean an activity focused on addressing a particular academic need for a low-performing subgroup or, in some cases, individual student-level interventions.

Changes: None.

Comments: One commenter suggested that the Department add ''scheduling'' to the list of operational flexibilities in proposed §§ 200.24(b)(7) and 200.24(d)(1)(v) that an SEA or LEA consider providing to support full and effective implementation of comprehensive and targeted support and improvement plans. This commenter stated that this addition is necessary to ensure that principals have autonomy to make critical school-level decisions regarding not only staffing and budgets, but also scheduling. In addition, this commenter recommended adding to proposed § 200.24(b)(8) an assurance that the new principal, if applicable, will be identified on a timeline that allows for meaningful participation in the planning activities so that new principals have sufficient time to plan before the school year begins.

Discussion: We agree with the commenter that there may be other areas of operational flexibility beyond budgeting and staffing, including scheduling, that States or LEAs should consider providing, as appropriate, to ensure full and effective implementation of school improvement plans. However, we believe that States and LEAs are best positioned to determine which areas of operational flexibility should be considered, and decline to add any further examples beyond those already included in the non-exhaustive list in the regulations.

Changes: None.

Comments: One commenter recommended requiring States to provide some type of support to targeted support and improvement schools that do not receive section 1003 funds.

Discussion: We agree that States should provide technical assistance and other support to all identified schools, including schools that do not benefit from section 1003 funds, and we note that States may use their 5 percent State-level set-aside under section 1003 for this purpose. However, we decline to require such support in the final regulations because it could conflict with other provisions in the ESEA, as amended by the ESSA, such as the requirement that States prioritize school improvement technical assistance and related support to LEAs with significant numbers or percentages of identified schools.

Changes: None.

Comments: One commenter stated that the way funding is allocated to support school improvement is unnecessary and extremely time consuming to document.

Discussion: The requirements and procedures for awarding section 1003 school improvement funds are closely tied to the requirements of the ESEA, as amended by the ESSA, and are designed to both ensure that school improvement funds are used effectively to support improved student outcomes in identified schools and to ensure appropriate accountability for taxpayer-provided funds. However, we appreciate that the term ''allocate'' may imply that States should provide detailed documentation about their fiscal allocation process; therefore, we are revising § 200.24(d)(1)(i) to clarify that the State must describe, in its State plan, its process to award grants to LEAs.

Changes: We have revised § 200.24(d)(1)(i) to clarify that each State must describe, in its State plan under section 1111 of the ESEA, as amended by the ESSA, the process to award grants to LEAs under section 1003.

Comments: One commenter supported the requirement making schools identified for targeted support and improvement due to low assessment participation rates ineligible for section 1003 school improvement. This commenter also requested clarification regarding whether schools that do not meet exit criteria after the initial award period can receive additional school improvement funding. This commenter stated that the regulations do not specify what occurs after the award period expires if the school has not met the defined exit criteria.

Discussion: We appreciate the commenter's support and further clarify that grants under section 1003 may be awarded for up to four years, and thus may be continued for schools that do not meet their exit criteria, provided that such schools take the actions required by either §§ 200.21(f) for schools identified for comprehensive support or 200.22(e) for schools identified for targeted support.

Changes: None.

Sections 200.30 and 200.31 Annual State and LEA Report Card

General

Comments: Several commenters expressed support for proposed regulations clarifying statutory requirements for the State and LEA report cards required by the ESEA, as amended by the ESSA, and highlighted increased transparency and disaggregation for many of the data elements as particularly helpful. Conversely, some commenters expressed general opposition to the proposed regulations, variously asserting that they exceed statutory requirements; would be burdensome to implement; and, based on past experience, would be unlikely to result in better student outcomes.

Discussion: The Department appreciates support for the State and LEA report card regulations and notes that they are consistent with sections 1111(h)(1)(C) and 1111(h)(2)(C) of the ESEA, as amended by the ESSA, which maintain a majority of the State and LEA report card requirements required by NCLB and add several new requirements.

The Department values transparency, consistent with the statute, and disagrees that efforts to support improvements in teaching and learning have not benefited from the State and LEA report card provisions under the ESEA, as amended by NCLB. With respect to LEA report cards in particular, there is evidence that when school quality information, including information about school accountability results, is provided to parents, they pay attention and respond.[27] Report cards can positively impact the extent to which parents engage in their children's education and, in turn, help to improve student outcomes. As such, we believe that any burden imposed by the report card requirements is outweighed by the resulting educational benefits.

In response to commenters who generally opposed the requirements on the ground that they exceed the statutory requirements, as discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that authority and that these regulations fall squarely within the scope of title I, part A of the statute, consistent with section 1111(e), the regulations need not be specifically authorized by the statute, nor is the Department limited to issuing regulations that merely restate the requirements in the statute.

Changes: None.

Development of Report Cards in Consultation With Parents

Comments: Many commenters supported proposed §§ 200.30(b)(1) and 200.31(b)(1), which require that State and LEA report cards be developed in consultation with parents. Some commenters requested that the language be expanded to require consultation with other stakeholders as well, including teachers, principals, other school leaders, specialized instructional support personnel, and special education teachers. Some commenters suggested that each State also be required to describe its consultation process. Additionally, one commenter asserted that the statute does not require parental consultation on the LEA report card and, therefore, such consultation would be more appropriately addressed through non-regulatory guidance.

Discussion: We appreciate the support from many commenters who share our belief that it is essential that the perspectives of parents—who are among the primary consumers of State and LEA report cards—be solicited, considered, and incorporated into the report card development process. We also believe that while the ESEA, as amended by the ESSA, does not specifically require consultation with parents in the development of LEA report cards, requiring such consultation falls within the scope of and is consistent with the statutory consultation requirement for State report cards, consistent with section 1111(e) of the ESEA, as amended by the ESSA. Moreover, we believe parental consultation on LEA report cards is particularly important given that these report cards typically contain the school- and district-level

[27] Black, S.E. (1999). ''Do better schools matter? Parental valuation of elementary education.'' Quarterly Journal of Economics, 114 (2): 577–99.

Charbonneau, E., & Van Ryzin, G.G. (2012). ''Performance measures and parental satisfaction with New York City Schools.'' American Review of Public Administration, 42 (1): 54–65.

Figlio, D.N. & Lucas, M.E. (2004). ''What's in a grade? School report cards and the housing market.'' American Economic Review, 94 (3): 591–604.

Hastings, J.S. & Weinstein, J.M. (2008). ''Information, school choice, and academic achievement: Evidence from two experiments.'' Quarterly Journal of Economics, 123 (4): 1373–414.

Jacobsen, R. & Saultz, A. (2013). ''Do good grades matter? Public accountability data and perceptions of school quality.'' In The Infrastructure of Accountability, ed. Anagnostopoulos, D., Rutledge, S.A., & Jacobsen, R. Cambridge, MA: Harvard Education Press.

Jacobsen, R., Saultz, A. & Snyder, J.W. (2013). ''When accountability strategies collide: Do policy changes that raise accountability standards also erode public satisfaction?'' Educational Policy, 27 (2): 360–89.

Koning, P. & Wiel, K.V.D. (2013). ''Ranking the Schools: How school-quality information affects school choice in the Netherlands.'' Journal of the European Economic Association, 11 (2): 466–493.

Nunes, L.C., Reis. A.B., & Seabra, C. (2015). ''The publication of school rankings: A step toward increased accountability?'' Economics of Education Review, 49 (December): 15–23.

Rockoff, J.E. & Turner, L.J. (2008). *Short run impacts of accountability on school quality.* Working Paper 14564, National Bureau of Economic Research, *http://www.nber.org/papers/w14564.*

information that is most relevant and useful to parents. In addition, as discussed previously in the section on *Cross-Cutting Issues,* the Department's rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, allows it to issue regulatory provisions not specifically authorized by statute.

States and LEAs have discretion to include other stakeholders in the development of their report cards and we believe they are likely to include many of the individuals suggested by commenters. As noted previously, however, the emphasis of the regulations on parental consultation is based on the requirements of the ESEA, as amended by the ESSA. For these reasons, we decline to specify additional stakeholders in the final regulations.

Changes: None.

Accessibility of Notices, Documentation, and Information

Comments: Many commenters remarked on the requirements that appear in several sections of the proposed regulations (including proposed §§ 200.30(c), 200.30(d)(1)(i), 200.31(c), 200.31(d)(1), 200.31(d)(2), 200.32(b), 299.13(f), and 299.18(c)(4)(v)), regarding the use of Web sites to disseminate required information including, for example, annual State and LEA report cards and a State's consolidated State plan or individual program State plan. Further, while proposed § 200.21(b) does not explicitly mention posting of the notice that an LEA must provide to parents of students in schools identified for comprehensive or targeted support and improvement on a Web site, some commenters suggested that a Web site may be the vehicle through which LEAs meet this requirement.

While a small number of commenters supported the accessibility requirements generally, several commenters asserted that the requirements do not sufficiently ensure that parents and other stakeholders are able to access the documentation and information discussed in the proposed requirements. Specifically, many commenters expressed concern regarding the accessibility for individuals with disabilities, and requested that we strengthen the requirements. For example, commenters recommended requiring that Web sites conform with the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI–ARIA) 1.0 for web content. In addition, some commenters recommended that States and LEAs ensure that parents without home access to the Internet are provided with the information included on State and LEA report cards.

Further, many commenters suggested that the Department strengthen the provisions to accommodate parents with limited English proficiency by, for example, requiring that such documentation and information be available in the most populous languages in the State or LEA, as applicable, or that the Department define certain terms in the proposed accessibility requirements (*e.g.,* ''to the extent practicable''). Finally, several commenters suggested that the Department require States to provide information included on State report cards in an easily accessible manner that is publicly downloadable by all visitors to a State's Web site without restrictions, necessary permissions, or fees.

Discussion: We agree that all parents and other stakeholders, including those with disabilities and those who have limited English proficiency, must have meaningful access to documentation and information that States and LEAs disseminate. Such access is critical in order to understand State, LEA, and school performance and progress, meaningfully engage in reform efforts, and help to ensure that all children have an opportunity to meet a State's academic standards.

Although the ESEA, as amended by the ESSA, and its implementing regulations require that certain information on State or LEA Web sites be ''accessible,'' the requirement that Web sites be accessible to individuals with disabilities is also based on the Federal civil rights requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. 794, title II of the Americans with Disabilities Act, 42 U.S.C. 12131 *et seq.,* and their implementing regulations, all of which are enforced against SEAs and LEAs by the Department's Office for Civil Rights (OCR).

Although the Department does not currently require States and LEAs to use specific Web site accessibility standards, under the ESEA, as amended by the ESSA, and Federal civil rights laws and regulations, States and LEAs must ensure that information provided through electronic and information technology, such as on Web sites, is accessible to individuals with disabilities. In OCR's enforcement experience, where a State or LEA provides required information through Web sites, it may be difficult to ensure compliance with accessibility requirements without adherence to modern standards such as the WCAG 2.0 Level AA standard, which includes criteria that provide comprehensive Web accessibility to individuals with disabilities—including those with visual, auditory, physical, speech, cognitive, developmental, learning, and neurological disabilities. Accordingly, we strongly encourage States and LEAs that disseminate information via Web sites to consider that standard as they take steps to ensure that their Web sites comply with requirements of these regulations and with Federal civil rights laws. WCAG 2.0 has been designed to be technology neutral to provide Web developers more flexibility to address accessibility of current as well as future Web technologies; in addition, Level AA conformance is widely used, indicating that it is generally feasible for Web developers to implement. The developers of WCAG 2.0 have made an array of technical resources available on the W3C Web site at no cost to assist entities in implementing the standard. For more information, see *www.w3.org/WAI/.*

Similarly, the Department expects that States and LEAs will provide access for parents who may not have online access, such as by providing online access at their local school or LEA administrative office. Regarding requests to add accessibility requirements to ensure that parents with limited English proficiency can access documentation and information, including by defining certain terms in the proposed accessibility requirements (*e.g.,* ''to the extent practicable''), please see additional discussion in § 200.21(b)(2).

Finally, with respect to making SEA and LEA report card data available to be downloaded, while the Department encourages States and LEAs to make available the information included on report cards in easily accessible, downloadable formats that are freely open to the public, the Department declines to impose additional potentially burdensome requirements on States and LEAS given the extent of information required by the statute for inclusion on report cards.

Changes: None.

Recommendations To Include Additional Information on State and LEA Report Cards

Comments: Many commenters recommended that the Department add additional requirements, data elements, or other information to State and/or LEA report cards. Specifically, several commenters recommended that the Department require that report cards

provide for comparability of all State and LEA report card data at the State, LEA, and school levels, and that data be presented such that it can be easily compared across LEAs. Some of these commenters further requested that the Department specify certain parameters for States choosing to meet the cross-tabulation assurance under section 1111(g)(2)(N) of the ESEA, as amended by the ESSA, via their State report cards, including that the data be in certain file formats to ensure that it can be easily downloaded and analyzed.

Several commenters requested that the Department require additional data elements or information not required by the statute be included on State and LEA report cards, including, for example, disaggregation by additional subgroups such as justice-involved youth and American Indians; further disaggregation within subgroups currently required including Asian American/Pacific Islanders, English learners, and students with disabilities; indication of subgroups too small for reporting; reporting on whether an LEA chooses the exemption under § 200.21(g) for a high school identified for comprehensive support and improvement and, if so, the reason for such exemption; more prominent information on subgroups whose performance declined so that school-level declines are not attributed to any one subgroup; data on access to technology resources; data on access to the arts in high- versus low-poverty schools; and information on how LEAs will use funds under title I and elsewhere to support activities that coordinate and integrate before- and after-school programs.

One commenter appreciated the Department indicating that States and LEAs can add information related to the number and percentage of students attaining career and technical proficiencies. Finally, two commenters requested additional information, including student achievement data on subject areas in addition to reading/language arts and mathematics (report cards also require results of the State's science assessments) and results on the indicators in a State's accountability system for all schools, including those that have not been identified as comprehensive or targeted support and improvement schools.

Discussion: The ESEA, as amended by the ESSA, maintains the majority of the State and LEA report card provisions required under the ESEA, as amended by NCLB, and adds several additional reporting requirements. For example, LEA report cards must continue to include information on how the academic achievement of students in the LEA compares to that of students in the State as a whole and, at the school level, how the academic achievement of students in the school compares to that of students in the LEA and the State, respectively, in reading/language arts, mathematics, and science. Further, the ESEA, as amended by the ESSA, requires that LEA report cards include, for all schools (not solely schools identified for comprehensive or targeted support and improvement), results on the indicators in a State's accountability system including, for example, information on the performance on the other academic indicator under section 1111(c)(4)(B)(ii) of the ESEA, as amended by the ESSA, used by the State in the State accountability system for public elementary schools and secondary schools that are not high schools; high school graduation rates; and information on the performance on the other indicator or indicators of School Quality or Student Success under section 1111(c)(4)(B)(v) of the ESEA, as amended by the ESSA, used by the State in the State accountability system, etcetera.

With respect to additional requirements that commenters recommended the Department add to the State and LEA report card regulations, while we agree that States and LEAs should strive to develop report cards that convey data and information in ways that maximize use by parents and others, we believe that the requirements for State and LEA report cards under section 1111(h)of the ESEA, as amended by the ESSA, and §§ 200.30 through 200.37 sufficiently ensure that State and LEA report cards will be transparent and maximally useful to parents and other stakeholders. Further, States and LEAs can, if they choose to do so, display graphically, or in other ways, comparisons of State, LEA, and school performance on data elements other than student academic achievement on the assessments required under section 1111(b)(2). States choosing to meet the cross-tabulation assurance under section 1111(g)(2)(N) of the ESEA, as amended by the ESSA, via their State report cards, can provide the data—as well as other data reported on report cards—in certain file formats to ensure that it can be easily downloaded and analyzed. The Department believes that doing so would facilitate use by a wide range of consumers of report cards, including people who may use the data to identify trends that may be of use to States, LEAs, and schools in engaging in data driven decision making. However, we are not requiring States to do so, as this may impose additional burden for some States.

With respect to requiring additional information on State and LEA report cards that is not required under section 1111(h)(1)–(2) of the ESEA, as amended by the ESSA, and proposed §§ 200.30–200.37, given the extent of information that is required for inclusion on State and LEA report cards, the Department declines to require additional information. However, sections 1111(h)(1)(C)(xiv) and (h)(2)(C)(iii) of the ESEA, as amended by the ESSA, provide for both States and LEAs, at their discretion, to include additional information that they believe will help parents and other stakeholders understand State, LEA, and school performance and progress. Such additional information could include any or all of the data elements that commenters noted above. In particular, in light of the student demographics in particular States, LEAs, or schools, States or LEAs may wish to report on the performance of additional student subgroups not required under the ESEA, as amended by the ESSA, or further disaggregate required reporting elements by subgroups that are not required under the ESEA. For example, States and LEAs may wish to disaggregate data by subgroups, such as justice-involved youth or American Indians, that are not required under the ESSA, as amended by the ESSA. Doing so may help to better identify the needs of students in these subgroups and support State, LEA, and school efforts to improve teaching and learning for these students.

In general, States and LEAs have flexibility to go beyond what section 1111(h)(1)(C), (2)(C) and §§ 200.30 through 200.37 require regarding presentation and information required on State and LEA report cards. For example, States and LEAs can provide report card data in formats that can be easily downloaded, add additional information unique to their State and local contexts, and include additional comparative data or provide mechanisms for the public to generate such comparisons. The Department supports State and LEA report cards that both align with the requirements in the ESEA, as amended by the ESSA, and are tailored to the unique composition and needs of States and LEAs.

Changes: None.

State and LEA Report Card Overview

Comments: Some commenters supported the overview section in proposed §§ 200.30(b)(2) and 200.31(b)(2) on either or both the State and LEA report cards, explaining that such a section will help ensure that

parents and other stakeholders encounter key metrics about State, LEA, and school performance as the first information when they review report cards.

Conversely, some commenters opposed the overview section requirements on either or both the State and LEA report card. Some commenters asserted that the overview requirements extend beyond what is required for State and/or LEA report cards under sections 1111(h)(1)–(2) of the ESEA, as amended by the ESSA. Others asserted that the parameters were too prescriptive and decisions of content and format for the overview sections would best be left to States and LEAs or addressed in non-regulatory guidance. A few commenters specified that States should be able to decide, in particular, whether or not to include a school's summative rating on the LEA report card overview for each school served by the LEA. One commenter recommended that the Department allow for States to differentiate the content of the State and LEA report card overview sections so that these sections can be tailored to what parents need to know most given the particular State and LEA context. One commenter suggested that providing disaggregated data for some subgroups but not others on the report card overview section could be confusing.

Specific to the format of the LEA report card overview for each school served by the LEA, several commenters contended that the required information would not fit on a single sheet of paper as required in proposed § 200.31(b)(3). Others suggested that the Department be mindful of the need to ensure that the font size on the LEA report card overview for each school served by the LEA be of sufficient size to be able to effectively communicate information. One commenter suggested that the page length of the LEA report card overview for each school served by the LEA cannot be appropriately determined until a State finalizes the elements of its accountability system. Finally, other commenters requested clarification regarding what exactly constitutes a single sheet of paper.

Discussion: We appreciate the comments that support the State and LEA report card overview section, and concur that the overview section will help parents and the public more effectively access and consider data in engaging in State, LEA, and school reform efforts. Particularly given the amount of information that State and LEA report cards must include under the ESEA, as amended by the ESSA, the overview section serves to highlight certain data elements in order to quickly convey State, LEA, and school performance and progress. With the flexibility States are given to include extensive accountability system indicators in evaluating the performance and progress of schools, a school's determination is an important piece of summary information that will help provide a holistic picture of school performance and progress. The information to be included on the State and LEA overviews can help to provide context for reviewing the full data elements on State and LEA report cards.

The State and LEA report card overviews align with the requirement in sections 1111(h)(1)(B) and 1111(h)(2)(B) of the ESEA, as amended by the ESSA, that report cards be concise and presented in an understandable and uniform format. In particular, the overview sections serve to succinctly convey State, LEA, and school performance and progress while not abandoning minimum statutory report card requirements related to transparent and accurate presentation of a broad range of data and therefore fall squarely within the scope of section 1111(h) of the ESEA, as amended by the ESSA, consistent with section 1111(e). As discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that authority, it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

Regarding the subgroups included on the overview section, States and LEAs have discretion as to whether to include all disaggregated subgroups required under section 1111(c)(2) of the ESEA, as amended by the ESSA, and § 200.16(a), while including, at a minimum, the subgroups a State uses for accountability purposes consistent with § 200.16. While the Department believes that it is critical to identify the needs of all subgroups for which the statute requires disaggregated reporting, gathering an understanding of the performance that led to a school's accountability determination can help frame school performance overall and provide context for the further disaggregation that will be provided in the full State and LEA report cards.

Further, the Department agrees with several commenters that the LEA overview section for each school served by the LEA must be of sufficient length and font size to meet the goal of providing critical information to help parents and other stakeholders understand key metrics of State, LEA, and school performance. We also agree that additional flexibility is needed to do so. To help determine the most appropriate length and font size of the LEA overview for each school served by the LEA, LEAs should include discussion of this LEA report card section when they consult with parents in the development of the LEA report cards as required under § 200.31(b)(1).

Finally, given the concern regarding length of the overview section, rather than prescribe a particular length, we are deleting the requirement for that the LEA report card overview for each school served by the LEA be limited to a single piece of paper. Thus, the regulations need not clarify what constitutes a single sheet of paper.

Changes: We revised § 200.31(b)(3) to remove the requirement that the LEA overview for each school served by the LEA be on a single sheet of paper.

Dissemination of LEA Report Card School-Level Overviews

Comments: Some commenters addressed the requirement in proposed § 200.31(d)(3)(i) regarding dissemination of the LEA report card overview for each school served by the LEA. One commenter commended the Department for including a requirement to provide such overview to parents of each student enrolled in the LEA by either mail or email. However, some commenters asked for clarification of the proposed dissemination requirement. In addition, one commenter expressed opposition to what the commenter perceived as a requirement to provide parents with hard copies of the LEA report card overview for each school. Another commenter opposed the requirement to disseminate the LEA report card overview to parents of each enrolled student in each school via either mail or email, asserting that this requirement extends beyond what section 1111(h)(2)(B)(iii) of the ESEA, as amended by the ESSA, requires.

Discussion: We appreciate support for the requirement in § 200.31(d)(3)(i) to disseminate the LEA overview section for each school served by the LEA directly to parents. This provision offers regular mail and email as examples of how this requirement could be met. Hard copy dissemination is not required. As suggested by one commenter, methods such as providing the overview at parent-teacher conferences, at parent nights, or with students to take home would also be sufficient to meet this requirement.

Regardless of the method selected for providing this information to parents,

we believe that, consistent with the dissemination and accessibility requirements under section 1111(h)(2)(A) and (B)(iii) of the ESEA, as amended by the ESSA, key information about school performance must reach parents directly and in a timely fashion so that they have relevant information to work effectively with educators and local school officials during the school year. Moreover, as discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that rulemaking authority and that these regulations fall within the scope of section 1111(h) of the ESEA, as amended by the ESSA, consistent with section 1111(e), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

Changes: We have revised § 200.31(d)(3)(i) to clarify that LEAs can disseminate the LEA report card overview for each school served by the LEA directly to parents by means such as email, mail, or other direct means of distribution.

Report Card Dissemination Timeline Generally

Comments: Several commenters expressed support for the annual December 31 deadline for States and LEAs to disseminate report cards under §§ 200.30(e) and 200.31(e), suggesting that an annual deadline would encourage States and LEAs to provide more timely information to parents and stakeholders. Many commenters opposed the annual deadline because of concerns related to additional administrative burden that would be caused by overlapping report card dissemination and Department reporting timelines. These commenters offered a number of alternative proposals, including the removal of the deadline for dissemination of report cards, an alternate deadline of March 31, and a State-determined deadline that would be included in a State consolidated plan. Some commenters suggested maintaining the December 31 deadline, but also allowing States and LEAs to update report cards after December 31 with data unavailable on December 31.

Some commenters also claimed that the ESEA, as amended by the ESSA, does not authorize the Department to require a specific deadline for dissemination of State and LEA report cards. These commenters argued that December 31 is an arbitrary reporting deadline not found in statute.

A few commenters cited challenges meeting the deadline specifically for reporting graduation rates, per pupil expenditures, and postsecondary enrollment. Responses to those comments are provided below in separate comment summaries specific to these data elements.

Discussion: We believe that timely report card dissemination, when combined with the report card overview section requirements in §§ 200.30 and 200.31, will help ensure parents and the public can more effectively access and use State-, LEA-, and school-level data to help address achievement, opportunity, and equity gaps during the school year.

We acknowledge that the newly required report card elements under the ESEA, as amended by the ESSA, may, initially, be more difficult for States and LEAs to implement. For this reason, §§ 200.30 and 200.31 include a one-time, one-year extension for those reporting elements. Although we decline to extend the general report card dissemination deadline, as discussed below, we have revised §§ 200.30(e) and 200.31(e) to permit States and LEAs to delay inclusion of data on per-pupil expenditures on annual State and LEA report cards until no later than June 30 following the December 31 deadline, provided that the report cards otherwise meet the December 31 dissemination deadline and include a description of when per-pupil expenditure data will be made available. We note that specific comments related to the timeline for reporting graduation rates, per pupil expenditures, and postsecondary enrollment are discussed more fully below.

In response to commenters who questioned our authority in this area, as discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that rulemaking authority and given that these regulations fall within the scope of title I, part A of the statute, consistent with section 1111(e), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision. The Department believes that December 31 provides States with sufficient time to report on the required data elements, while maintaining the goal of timeliness such that parents, teacher, principals, and other stakeholders can consider the information in helping to focus school improvement efforts. The December 31 date is purposefully chosen to balance the needs of States and LEAs in ensuring accurate data while providing such data in as timely a manner as possible.

Changes: None.

Graduation Rates Reporting Timeline

Comments: Several commenters opposed the December 31 deadline for reporting prior year adjusted cohort graduation rates on State and LEA report cards. Commenters cited several reasons for their opposition. Some commented that it is an unreasonable timeline because of the inclusion of summer graduates, and because States use the October 1 enrollment count to determine whether students have dropped out. Others indicated a preference for continuing to allow States to lag graduation rates for report card purposes. One commenter suggested that to report prior year graduation rate data on the report card, it would be necessary to move the deadline to March 31 or later every year. One commenter noted that the deadline would require system changes that would be difficult or impossible to perform without significant additional resources.

Discussion: We believe that it is important that graduation rate data is as timely as possible to give stakeholders, including parents, access to information that is still relevant for their decision making and to accurately describe the success of a school in the most recent school year. We understand that some State processes to review and audit graduation rate data are on a timeline that does not currently allow for a December release of graduation rate data and this provision will require some States to adapt their systems to meet the December 31 timeline. However, we do not agree with commenters that indicated that releasing prior year graduation rate data by December 31 is unreasonable. By December of 2018, States will have had seven years to refine their process for producing adjusted cohort graduation rate data (since the requirements went into effect in 2008 for reporting on the 2010–11 school year). Even with the inclusion of summer graduates, States should have sufficient time to review and release their data without the need for significant additional resources.

We also disagree with commenters suggesting that a State should be permitted to lag its graduation rate data. Data are most useful and meaningful when they represent the most recent year. If a State reports lagged data in 2018, then it would be reporting 2016–17 graduation rates in December of the 2018–19 school year, meaning that the data available to parents would be a

year and a half old. This delay will have an adverse impact on the utility of the data for decision making and transparency, which is one of the primary purposes of making timely data available on State and LEA report cards.

Changes: None.

Per-Pupil Expenditures Reporting Timeline—Annual Reporting

Comments: Many commenters requested that, for reporting per-pupil expenditures under proposed § 200.35, the Department allow additional flexibility beyond the one-time, one-year extension a State may request under proposed §§ 200.30(e)(2) and 200.31(e)(2) if the State or its LEAs cannot meet the December 31, 2018, deadline for reporting newly requested information, such as per-pupil expenditures, on report cards. These commenters stated that reporting per-pupil expenditures annually by December 31 is an unreasonable timeline because of possible auditor shortages, inconsistencies with single audit requirements for Federal grantees, incompatible LEA expenditure reporting timelines, which in some cases are established in State law, and the increased likelihood of inaccurate data production if States must publish report cards with per-pupil expenditure data shortly after receiving unverified LEA expenditure reports.

A majority of these commenters requested that we change the annual per-pupil expenditure reporting deadline to June 30 annually. Other commenters suggested extending the deadline to March 31, while some recommended using a State-determined date for publishing per-pupil expenditure data on report cards. One commenter supported the December 31 annual deadline for per-pupil expenditures and two additional commenters generally supported the December 31 annual deadline for disseminating report cards, although they did not specifically mention per-pupil expenditures.

Discussion: We agree with commenters that States and LEAs should report per-pupil expenditure data that is accurate, has been thoroughly reviewed, and clearly reflects how resources are allocated in schools. We also agree with commenters that an annual reporting deadline of June 30 would provide the appropriate amount of time for States and LEAs to ensure high-quality data is publicly available.

Therefore, we have added new §§ 200.30(e)(2) and 200.31(e)(2), which permit a State or LEA that is unable to include per-pupil expenditures on report cards by the December 31 deadline to update its report card with such data no later than the following June 30. Additionally, the Department will provide technical assistance and support to States and LEAs in implementing the per-pupil expenditure reporting requirement.

Changes: We have revised §§ 200.30(e) and 200.31(e) to clarify when newly required information must be included on State and LEA report cards and to permit States and LEAs to delay inclusion of data on per-pupil expenditures on annual State and LEA report cards until no later than June 30, provided that the report cards otherwise meet the December 31 dissemination deadline and include a brief description of when per-pupil expenditure data will be made available.

Per-Pupil Expenditures Reporting Timeline—First Time Reporting of These Data

Comments: Several commenters noted that some State and LEA data collection systems may be unable to collect and report school year 2017–2018 per-pupil expenditure data. Some commenters indicated that SEAs have invested in sophisticated data systems that focus on student achievement over the past few years, but have not invested in comparable fiscal tracking systems. Commenters also stated that maintaining the statutory implementation timelines would mean fewer SEA resources could be devoted to the development and implementation of new accountability systems. These commenters requested that the Department allow flexibility for States and LEAs that do not have the capacity to implement the per-pupil expenditure reporting requirement by the December 31, 2018, deadline proposed in the regulations.

Discussion: To accommodate potential challenges in implementing new report card requirements, States and their LEAs may request a one-time, one-year extension to build technical capacity, where necessary. We believe that this flexibility, in addition to the option to defer annual reporting of per-pupil expenditures from December 31, 2018, to the following June 30, provides States a sufficient amount of time for State fiscal collection and reporting systems to be aligned with statutory and regulatory requirements. As a result of this additional flexibility, if a State is unable to report per-pupil expenditures in school year 2017–2018 by June 30, 2019, and is granted a one-time, one-year extension their plan and timeline would outline how the State will include school year 2018–2019 per-pupil expenditure information on State and local report cards by June 30, 2020.

Changes: None.

Postsecondary Enrollment Reporting Timeline

Comments: Some commenters expressed concerns with timelines for postsecondary enrollment reporting. Two commenters indicated that due to processing time or collection timelines, States may not be able to report postsecondary data on the immediately preceding school year by December 31. One commenter provided data that indicated that seven percent of all students and 11 percent of low income, high minority students would not be captured in the calculation if data on the immediately preceding school year are required by December 31. Instead, commenters recommended that States be allowed to lag their postsecondary enrollment data. One commenter indicated that the requirement to begin reporting in 2017 is too ambitious and suggested that States establish their own reporting timeline following consultation with stakeholders. Another commenter recommended that we allow for a delay between graduation and postsecondary actions for reporting this metric if the student was unable to enroll due to health problems or some other circumstance.

Discussion: We appreciate commenters that noted the challenges of reporting data on the immediately preceding school year by December 31 due to collection and processing timelines. While the statute specifies that the postsecondary enrollment metric must be defined in such a way that it captures students who enrolled in the first academic year that follows their graduation (or the immediately following academic year), the Department does not believe that the language implies that States are expected to include the data representing the graduating class from the immediately preceding school year on their report cards. We recognize that the academic year could include students that enroll in the fall, spring, or summer following their graduation from high school. Since report cards are due before the completion of the full academic year, it would not be possible for States to include complete postsecondary data on their report cards. As such, the Department's expectation is that postsecondary enrollment will be lagged (*i.e.,* the report card produced in December of 2018 will contain data on the graduating class from the 2016–17 school year instead of the 2017–18 school year). While we recognize that reporting on

this new metric by the time report cards for the 2017–2018 school year must be disseminated may be challenging for some States and LEAs, we note that under §§ 200.30(e)(2) and 200.31(e)(2) a State may request a one-time, one-year extension for reporting on some or all of the new information, including postsecondary enrollment data, that must be included on State and LEA report cards.

We also recognize that there are circumstances that prevent students from immediately enrolling in programs of postsecondary education, but the time frame in which students can be included in this metric is also in the statute, which specifies that it must be in the first academic year that follows the student's graduation. However, we believe that the first academic year can include students that first enroll in the fall, spring, or summer, which allows for the inclusions of students that may be unable to enroll by the fall.

Changes: None.

Additional Statutory Subgroups Generally

Comments: Some commenters submitted general comments related to three new subgroups on which States must disaggregate certain information on report cards as required under section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA: Children who are homeless, children in foster care, and children with parents who are members of the Armed Forces. A few commenters indicated their support for the definitions included in the regulations, which would require States to use definitions consistent with other Federal laws for these subgroups to ensure consistency in reporting across States. Some commenters noted that reporting data on these new subgroups would create privacy concerns or other sensitive issues, since there will be small numbers of students in each group, particularly at the LEA and school levels.

Discussion: We appreciate comments supporting the definitions for the new subgroups required under the ESEA, as amended by the ESSA. We believe that these definitions will not only help ensure consistency across States but also align with definitions currently used for other programs supporting these populations, which will help our understanding of the outcomes of these students across programs. We agree with commenters that these populations may be small and that it is important to protect the privacy of small subgroups of students. In this regard, section 1111(i) of the ESEA, as amended by the ESSA, clearly addresses privacy of student data by requiring data to be collected and disseminated in a manner that protects the privacy of individual students, consistent with section 444 of GEPA (commonly known as the Family Educational Rights and Privacy Act (FERPA)). Section 1111(i) further states that disaggregation shall not be required if the n-size is small enough to reveal personally identifiable information or information that is not statistically sound. The Department has reinforced this requirement by including it in §§ 200.30(f)(2) and 200.31(f) of the regulations.

Changes: None.

Status as a Child in Foster Care

Comments: Some commenters noted that some States use a more expansive definition of children in foster care, which includes not just children living in 24-hour substitute care, but also children who may not yet have been removed from their homes but for whom the Title IV–E agency has placement responsibility. They requested that the requirements allow a State with an expanded definition to include these students in its status as a child in foster care subgroup.

Discussion: We do not agree with the recommendation that a State with an expanded definition of students in foster care should be permitted to use this definition for the purposes of reporting on this subgroup in title I report cards. Children who are placed in foster care and children who are allowed to remain at home under State custody represent two distinct populations; thus we believe it is important to preserve the subgroup being reported as those students who are placed in foster care. We believe that requiring disaggregation for the students placed in foster care will help States, State child welfare agencies, and other stakeholders gain a better understanding of the educational outcomes of a highly mobile population and the impact that being removed from home has on a child's ability to learn. As such, we believe that it is important to collect data only on those children who are placed in traditional out-of-home foster care. These data will be most useful to stakeholders if all children are reported using the same definition of children in foster care, and using an existing definition is the cleanest approach to implementing this new requirement. Further, this definition is consistent with the definition used in the non-regulatory guidance that we issued jointly with the Department of Health and Human Services, ''Ensuring Educational Stability for Children in Foster Care'' (Children in Foster Care Guidance) which helps to ensure consistency across program requirements. The Foster Care Guidance can be found at: *http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf.*

Changes: None.

Status as a Military-Connected Student

Comments: Several commenters supported the requirement in proposed § 200.30 to report academic results for students with a parent who is a member of the Armed Forces on active duty. Several commenters suggested proposed § 200.30 should also require identifiers for students with parents serving in the Reserve components of the military services or full or part-time National Guard. They argued that regardless of the specific military connection, parental deployment impacts children in the same manner. Two commenters suggested the identifier should also be extended to military-connected students who are eligible for special education services under the IDEA.

Two commenters requested the Department expand the definition of parent to include caretakers such as legal guardians, custodians, State-determined definitions of the legal guardians and custodians, and stepparents. These commenters also requested the Department specify at what time during the school year service by a military-connected parent is to be counted for purposes of identification.

One commenter asked the Department to explain the definition of all active duty and whether it includes deployed military parents only or also full-time military who are not deployed. One commenter asked why Congress included this identifier under the ESEA, as amended by the ESSA, and if there is evidence of delayed academic progress for children of parents in the military. One commenter argued the military-connected identifier will result in an unlawful violation of privacy.

One commenter requested that the Impact Aid regulatory requirements and these regulations be aligned, where possible, to limit administrative burden for LEAs, and that the Department gather feedback from LEAs that educate a significant number of military-connected students to ensure effective implementation of the new requirement. One commenter requested that the military-connected identifier be aligned with the reporting requirements under 20 U.S.C. 7703 (*i.e.,* the Impact Aid program).

Discussion: We agree with commenters that students with parents serving full-time in the National Guard face the same challenges as students

with parents on active duty in the Armed Forces. We also recognize that, as part of the process for developing proposed assessment regulations under title I, part A, the negotiated rulemaking committee reached consensus on regulations in which the issue of disaggregating achievement data for students with parents on active duty in the Armed Forces or on full-time National Guard duty is addressed. The negotiated rulemaking committee, relying on the same rationale as commenters, recommended that the Department require that State assessment systems be able to disaggregate assessment results for military-connected students to include those with parents on full-time National Guard duty. This recommendation is reflected in the Department's proposed assessment regulations, which require that State assessment systems enable results to be disaggregated within each State, LEA, and school by students with a parent who is a member of the Armed Forces on active duty or serves on full-time National Guard duty, where ''armed forces,'' ''active duty,'' and ''full-time National Guard duty'' have the same meanings given them in 10 U.S.C. 101(a)(4), 101(d)(1), and 101(d)(5). Additionally, because section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA, (which we have clarified in § 200.30(f)(iv)) cross-references the statutory definition of ''full-time National Guard duty'' in 10 U.S.C. 101(d)(5), it is unclear if Congress intended to extend the military connected identifier to include student with parents on ''full-time National Guard duty.'' Given these considerations, the Department agrees with commenters that in disaggregating information on student achievement on the State's academic assessments based a student's military-connected status, States and LEAs should be required to include students with a parent who is a member of the Armed Forces on active duty as well as students with a parent who serves on full-time National Guard duty in the subgroup of students with a parent who is a member of the Armed Forces on active duty.

We recognize the importance of service in the Reserve components of the military services and part-time National Guard. We note, however, that the statute focuses on full-time and active duty service in the military. As such, the Department declines to further extend the requirement regarding disaggregation by military-connected status.

We appreciate requests for additional clarification related to legal guardian status and when service by a military connected parent are to be counted for purposes of identification, but believes these questions are best addressed in non-regulatory guidance. We note though, that section 8101(38) defines a parent to include a legal guardian. With respect to the meaning of active duty, the term is clearly defined in the § 200.30(f)(iv)(B) consistent with the statutory definition in 10 U.S.C. 101(d)(1) and, as a result, the Department does not believe additional clarification is needed. However, the Department will consider providing additional information regarding this term in non-regulatory guidance.

The Department is unable to provide additional clarity related to the intent of Congress in requiring States and LEAs to disaggregate student achievement based on military-connected status. Nor is the Department able to provide evidence of delayed academic progress for children of parents in the military, primarily because the requirement to track academic performance of this subgroup of students did not exist prior to the enactment of the ESSA. The Department respects the concerns a commenter raised about student privacy, particularly of military-connected students, but is comforted by strong privacy protections under the ESEA, as amended by the ESSA, FERPA, and § 200.30, which it expects will be faithfully implemented by States and LEAs.

Although the Department declines to require States and LEAs to further disaggregate the military-connected student subgroup to distinguish between military connected students who utilize special education services under the IDEA and those that do not, the Department encourages State and LEAs to include reporting on additional subgroups, as appropriate. Further, we remind commenters that under section 1111(g)(2)(N) of the ESEA, as amended by the ESSA, States are able to provide cross-tabulated information by additional subgroups beyond the minimum requirements, which include major racial and ethnic group, gender, English proficiency status, and children with or without disabilities.

While the Department seeks to create consistency across program requirements where possible, there is a misalignment of military-connected statutory definitions between 20 U.S.C. 7703 (*i.e.,* the Impact Aid program) and definitions under the ESEA that reference 10 U.S.C. 101. Under Impact Aid, students are identified if they have a parent on active duty in the uniformed services (as defined in 37 U.S.C. 101) that do or do not reside on Federal property, while title I of the ESEA, as amended by the ESSA, references definitions of member of the Armed Forces on active duty or who serves on full-time National Guard duty (as defined in 10 U.S.C. 101). Further, the procedures for counting military students under the Impact Aid statute are more specific than military subgroup reporting requirements under the ESEA, as amended by the ESSA. Lastly, the Department will take into consideration the request to gather feedback from LEAs that educate a significant number of military-connected students and encourages SEAs to complete the same type of outreach as part of their required consolidated State plan consultation activities.

Changes: We have revised § 200.30(f)(iv) to clarify that, for purposes of reporting data on State and LEA report cards by military-connected status, a parent who is a member of the Armed Forces on active duty includes a parent on full-time National Guard duty. In so doing, we have further defined ''full-time National Guard duty'' consistent with 10 U.S.C. 101(d)(5). In addition, we made conforming edits in § 200.33(a)(3)(ii)(F).

Section 200.30 Annual State Report Card

Demographic and Achievement Data for Charter School Students by Charter School Authorizer

Comments: Many commenters supported the proposed requirement in § 200.30(a)(2)(ii) that State report cards include certain information for each authorized public chartering agency in the State, explaining that reporting this information would increase transparency and accountability for charter school authorizers. Other commenters, however, opposed this requirement, including some who suggested striking the requirement. Some commenters asserted the Department lacks the authority to require this information to be included on report cards because the statute does not require it. Other commenters indicated that it would be complicated and burdensome for States to identify the required comparison group, and that this complexity could undermine the goal of transparency. Some commenters suggested that the Department remove the comparison group component of the provisions and instead require States to report solely on the demographic composition and achievement of students in charter schools organized by charter authorizer.

Discussion: We appreciate the support for this provision from some commenters. With respect to the

Department's authority to issue this requirement, as discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that rulemaking authority, it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision. Moreover, the Department believes that transparency regarding the demographic composition and student achievement of charter school students, as compared to that of the relevant LEA or LEAs, falls within the scope of title I, part A of the statute, consistent with section 1111(e) and is necessary to advance the overall purpose of title I, which is ''to provide all children significant opportunity to receive a fair, equitable, and high quality education and to close educational achievement gaps.'' We note that providing this information by authorizer is particularly important given that authorizers generally have a significant oversight role with respect to the charter schools they authorize, and parents and other stakeholders may not be able to easily access this information by authorizer absent this requirement.

With respect to the comments regarding the potential difficulties associated with identifying an appropriate comparison group, the regulations provide flexibility for a State to determine the appropriate comparison, which may include the LEA or LEAs from which the charter school draws a significant portion of its students or a more specific, State-determined geographic community within an LEA. To ensure they are able to determine the appropriate comparison, we encourage States to consult with the charter school community, including authorized public chartering agencies. Further, we believe the benefits that will result from this reporting requirement in terms of increased transparency and accountability for this growing segment of public schools outweigh any burden it might impose on a State.

Changes: None.

Section 200.32 Description and Results of a State's Accountability System

General Comments

Comments: A few commenters expressed support for the requirements in proposed § 200.32 that State and LEA report cards include information on and results from a States' accountability system, including the requirement in proposed § 200.32(c)(2) and (c)(3) that LEA report cards include the reason that led to a school's identification as a comprehensive or targeted support and improvement school. One commenter noted that requiring the reason for identification will help LEA and school staff target school needs.

However, some commenters opposed the requirement that State and LEA report cards include a school's identification as a comprehensive or targeted support and improvement school and the reason that led to such identification, suggesting that these particular requirements extend beyond what sections 1111(h)(1)(C) and (h)(2)(C) of the ESEA, as amended by the ESSA, require. Another commenter suggested that proposed § 200.32(c)(2) and (c)(3) be expanded to require that LEA report cards include additional information regarding a school's identification as a comprehensive or targeted support and improvement school, specifically ''any missed targets.'' A few commenters requested that State and LEA report cards include additional information related to a State's minimum n-size for accountability, such as the number and percentage of all students and students in each subgroup for whose results schools in the LEA are not held accountable in the State's system of meaningful differentiation.

Two commenters supported the option in proposed § 200.32(b) for State and LEA report cards to provide the Web address or URL of, or a direct link to, the State's State plan or other location on the SEA's Web site where one can access the required description of a State's accountability system. Finally, one commenter requested that the Department replace the term ''rating'' with the term ''determination.''

Discussion: We appreciate the support of some commenters for various provisions in § 200.32. Sections 1111(h)(1)(C)(i)(V) and (h)(2)(C) of the ESEA, as amended by the ESSA, require that State and LEA report cards include the names of all schools identified by the State for comprehensive support and improvement or implementing targeted support and improvement plans. Further, we believe that, in conjunction with the identification of a school as a comprehensive or targeted support and improvement school, it is important for State and LEA report cards to indicate the reason that led to a school's identification in order to help focus school, parent, and community efforts to improve teaching and learning for all students and particularly for historically underperforming subgroups of students. As discussed previously in the discussion of *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that rulemaking authority and that these regulations fall squarely within the scope of section 1111(h) of the ESEA, as amended by the ESSA, consistent with section 1111(e), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

We decline to require additional information on State and LEA report cards related specifically to schools identified as comprehensive or targeted support and improvement or implications of a State's minimum n-size beyond what section 1111(h)(1)(C)(i) of the ESEA, as amended by the ESSA, and § 200.32 require. However, States and LEAs may include any additional information that they believe will provide parents and other stakeholders with important information about school performance and progress. Further, with respect to one commenter's request for additional information regarding a State's minimum n-size, we note that § 299.17(b)(4) requires States to provide additional detail related to their minimum n-size in either their consolidated State plan or individual title I plan. Thus, because § 299.13(f) requires the State plan to be published on a State's Web site, such information will be publicly available.

We concur with the commenters who supported the option to allow States and LEAs to provide the Web address or URL of, or a direct link to, the State's State plan or other location on the State's Web site where one can access the description of a State's accountability system required under section 1111(h)(1)(C)(i), (h)(2) of the ESEA, as amended by the ESSA, and § 200.32. Given the amount of information on State and LEA report cards, we recognize that a detailed description of some of the accountability system elements may not add significantly to parents' or other stakeholders' understanding of school performance and progress and thus believe it is appropriate to allow the State or LEA to provide a Web address for, or direct link to, the State plan or another location on the SEA's Web site for detailed information on the accountability system. We do encourage States and LEAs, in developing report cards, to consider the amount of information needed to help parents and other stakeholders engage in and understand the State accountability system. Finally, the Department is

replacing the term ''rating'' with ''determination'' for the same reasons as we discussed previously in § 200.18.

Changes: We have removed the term summative ''rating'' in final § 200.32(c)(4) and replaced it with ''determination.''.

Section 200.33 Calculations for Reporting on Student Achievement and Progress Toward Meeting Long-Term Goals

Reporting on Achievement

Comments: Two commenters supported the requirement in § 200.33(a)(3)(iii) for calculating and reporting the results of students at each level of achievement, while others opposed it. A few commenters requested that States be able to report information on student achievement using something other than percent proficient, including scale scores or a performance index. Other commenters suggested that it could be confusing to provide two different calculations for percent proficient, with some commenters elaborating that reporting both percentage of students tested and not tested in addition to proficiency based on valid test scores would be sufficient to reach appropriate conclusions regarding State, LEA, and school achievement information. Finally, some commenters requested that the Department add a requirement that States either notify parents of students in schools with differences in proficiency rates or explain on State and LEA report cards the difference between the two different proficiency calculations.

Discussion: We appreciate commenters who supported the requirement in § 200.33(a)(3)(iii). Section 1111(c)(4)(E)(ii) of the ESEA, as amended by the ESSA, requires that States measure, calculate, and report on the Academic Achievement indicator under section 1111(c)(4)(B)(i), in a manner in which the denominator includes the greater of either 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or the number of students participating in the assessments. Thus, with respect to this indicator of a State's accountability system, a school's performance will be based on this calculation. Because States will use this calculation for accountability purposes, we believe it is important to provide States, LEAs, and schools with information on student achievement on the reading/language arts, mathematics, and science academic assessments described under section 1111(b)(2) that is based on this calculation. However, we also believe that it is important to provide information on student achievement based on the number of valid test scores, as that represents the achievement of students that actually took the assessment. Together, these two calculations will help ensure that parents, teachers, principals, and other key stakeholders have access to a more nuanced picture of State, LEA, and school performance on the assessments required under the ESEA, as amended by the ESSA.

With respect to reporting on student achievement using a metric other than percent proficient, sections 1111(h)(1)(C)(xiv) and (h)(2)(C)(2)(iii) of the ESEA, as amended by the ESSA, provide for States and LEAs to include on report cards any additional information they believe will best provide parents, students, and other members of the public with information regarding the progress of each of the State's public elementary and secondary schools. This could include additional metrics of school, LEA, and State performance.

Changes: None.

Reporting Overall and by Grade

Comments: None.

Discussion: We wish to clarify that, in addition to State and LEA report cards including the percentage of students performing at each level of achievement under section 1111(b)(1)(A) of the ESEA, as amended by the ESSA, on the academic assessments under section 1111(b)(2) by grade, State and LEA report cards must include such information overall. In doing so, report cards will convey student achievement for all students at each grade-level tested and also for the State, LEA, and school as a whole. Thus, parents and other stakeholders will have a targeted, as well as more holistic, understanding of student achievement and be able to identify trends by grade and overall. Requiring reporting of these results overall is particularly important for LEA report cards that include information for each school served by the LEA, as small schools may not have enough students by grade in order to meet a State's minimum n-size for reporting but may have enough students overall by school.

Changes: We have revised § 200.33(a)(1) to require reporting overall and by grade.

Section 200.34 High School Graduation Rate

General

Comments: A few commenters generally supported the requirements for calculating the four-year adjusted cohort graduation rate in proposed § 200.34, while another commenter noted that they were little changed from the requirements under the previous regulations. One commenter objected to the four-year graduation rate because some students may need less time and some may need more time to graduate. Another commenter recommended attaching more value to a high school diploma.

Discussion: We appreciate support from commenters for regulations supporting on the calculation and reporting of meaningful four-year cohort graduation rates, and agree that they are very similar to the previous regulations. One important change, however, is that States and LEAs now may include in the numerator of the calculation students with the most significant cognitive disabilities who were assessed using the alternate assessment aligned to alternate academic achievement standards and receive State-defined alternate diplomas. We believe that the four-year adjusted cohort rate is an appropriate measure because it reflects the typical amount of time required to obtain a high school diploma, but we note that the regulations permit States to implement an extended-year graduation rate. Finally, the significant role of graduation rates for high schools in statewide accountability systems demonstrates the high value attached to a high school diploma as an essential outcome for all students under the ESEA, as amended by the ESSA.

Changes: None.

Comments: A few commenters raised technical considerations related to the adjusted cohort graduation rate, including the need to accurately track students that move between schools, business rules that may be necessary to account for different types of diplomas or alternative schools, and the importance of defining a ninth-grade cohort early in the school year.

Discussion: We believe that the requirements in the final regulations for calculating the adjusted cohort graduation rate, combined with State experience in implementing these requirements, generally provide both the guidance and flexibility that States need to address the technical concerns noted by the commenters. The adjusted cohort graduation rate accounts for many of the issues identified by commenters in its design. For example, as reflected in § 200.34(b), LEAs and schools are required to track students throughout their time in the cohort. Moreover, to remove a student from a cohort, schools and LEAs must confirm in writing the basis for such removal. Additionally, § 200.34(a)(2), consistent

with section 8101(25)(A)(i) and (23)(A)(i) of the ESEA, as amended by the ESSA, includes language that will ensure that the cohort is formed early enough in the year that it can account for most attrition, since it requires that a new cohort of students is formed no later than the date by which student membership data is collected by States for submission to NCES, which is typically near October 1. States should establish clear business rules and internal controls so that graduation rates information is tracked accurately at the school, LEA, and State levels.

Changes: None.

Comments: Some commenters suggested alternative metrics to replace or to report in addition to the adjusted cohort graduation rate, such as a completion indicator for students who finish high school using alternate pathways and timelines or a one-year graduation rate for certain schools designed to reengage students who are over age. Another commenter asserted that States should be permitted to select or define their own graduation rate measure.

Discussion: The regulations are consistent with section 1111(h)(1)(C)(iii)(II) and (h)(2)(C) of the ESEA, as amended by the ESSA, which require that a State and its LEAs calculate and report a four-year adjusted cohort graduation rate. A State may also calculate and report, at its discretion, one or more extended-year adjusted cohort graduation rates. Completer rates and other metrics that do not track students through their high school career mask critical information about student outcomes, such as students who drop out earlier in their high school career or students who take an extended period of time to graduate. While not required, States may include additional metrics that provide supplemental information about students completing high school through alternative routes or programs.

Changes: None.

Comments: One commenter requested clarification in the regulations about the inclusion of summer graduates in the four-year adjusted cohort graduation rate.

Discussion: Section 8101(23) and (25) of the ESEA, as amended by the ESSA, provides for students to be included as graduates in the numerator if they earn a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities, before, during, or at the conclusion of their fourth year of high school or a summer session immediately following the fourth year of high school. This permits, but does not require, a State to include summer graduates. If a State chooses not to include summer graduates in the numerator, those students still must be included in the denominator if they are part of the original cohort for that class.

Changes: None.

Regular High School Diploma Definition

Comments: Many commenters provided input on the definition of the term ''regular high school diploma'' under proposed § 200.34(c)(2), particularly insofar as the definition provides that it may not include a diploma based on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards. Although one commenter supported this language, the remaining commenters opposed some or all of the language around the IEP diploma. Some commenters asserted that the Department should not add to the plain language of the statute, but the majority of commenters opposed the language because of the potential unintended consequences of allowing an IEP diploma that is based on grade-level standards to be treated as equivalent to a regular high school diploma.

Discussion: We agree with the majority of commenters that a regular high school diploma should not include a diploma based on meeting IEP goals, regardless of whether those goals are fully aligned with a State's grade-level academic content standards. Under 34 CFR 300.320(a)(2), each child's IEP must include a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved and make progress in the general education curriculum and to meet each of the child's other educational needs that result from the child's disability. Although the use of standards-based IEPs has greatly expanded, IEP goals cannot serve as a proxy for determining whether a student has met a State's grade-level academic content standards. Therefore, a diploma based on meeting IEP goals will not provide a sufficient basis for determining that the student has met a State's grade-level academic content standards; rather, it will only demonstrate that the student has attained his or her IEP goals during the annual period covered by the IEP. Therefore, a diploma based on attainment of IEP goals, regardless of whether the IEP goals are fully aligned with a State's grade-level content standards, should not be treated as a regular high school diploma, and we are revising the final regulations to clarify this point. Finally, as discussed previously in the section on *Cross-Cutting Issues,* the Department's rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA, allows it to issue regulatory provisions not specifically authorized by statute, and we appropriately exercise that authority here given that the regulations fall squarely within, and are reasonably necessary to ensure compliance with, section 1111(h) of the ESEA, as amended by the ESSA, consistent with section 1111(e).

Changes: We have revised proposed § 200.34(c)(2) to remove the language ''that are not fully aligned with the State's grade level academic content standards'' following ''such as a diploma based on meeting IEP goals.''

State-Defined Alternate Diplomas

Comments: Some commenters supported proposed § 200.34(a)(1)(ii), which requires students receiving a State-defined alternate diploma to be counted in the numerator of the four-year adjusted cohort graduation rate. However, other commenters opposed the retroactive reporting requirements in proposed § 200.34(e)(ii)(4) for students who take longer than 4 years to earn an alternate diploma. These commenters opposed the proposed method of including students with the most significant cognitive disabilities who earn a State-defined alternate diploma in the adjusted cohort graduation rate only through retroactive reporting. These commenters recommended revising the final regulations to allow students to be included in the year that they graduate (instead of tying them to their original cohort and including them retroactively once they graduate). Commenters also recommended requiring disaggregation of the number and percentage of students with disabilities reported in the adjusted cohort graduation rate by (1) students receiving a regular high school diploma and (2) students receiving a State-defined alternate diploma.

Discussion: We appreciate the comments supporting the inclusion of students receiving a State-defined alternate diploma in graduation rate calculations. We also agree with commenters who recommended including such students in the four-year adjusted cohort graduation rate calculation in the year in which they graduate, while still ensuring that they are accounted for in a cohort, and are revising the final regulations accordingly. The final regulations will require a State to keep such a student in his or her original cohort until grade

12 and, at which time the IEP team can evaluate if the student is eligible and on track to receive the State-defined alternate diploma within the time period for which the State ensures the availability of FAPE. The final regulations ensure that a student removed from the cohort in grade 12 will be reassigned to the four-year graduation cohort of the year of exit, regardless of how the student exits. Additionally, the language allows for a meaningful way to include students with the most significant cognitive disabilities in extended-year graduation rates, if such rates are adopted by the State, by including such students in the extended-year rates associated with their new cohort (*i.e.,* in the subsequent years following their inclusion in the four-year graduation rate). Finally, the change allows for students with the most significant disabilities to be meaningfully included in measuring school and LEA performance under a State's accountability system.

We decline to require States to disaggregate graduation rates for students with disabilities those receiving a regular high school diploma and the State-defined alternate diploma, in part because we believe minimum n-size requirements would limit meaningful reporting of students receiving the alternate diploma in most districts. While States have discretion to include such disaggregated graduation rate data for students with disabilities on their report cards, they must comply with applicable local, State, and Federal privacy protections.

Changes: We have revised § 200.34(e)(4) by removing the language that required States to retroactively update the adjusted cohort graduation rate annually for students with the most significant cognitive disabilities receiving the State-defined alternate diploma. We have also added § 200.34(b)(5) regarding adjusting the cohort for students with the most significant cognitive disabilities who receive a State-defined alternate diploma.

Comments: One commenter requested that the Department clearly state that a State-defined alternate diploma received by a student with the most significant cognitive disabilities should not be treated as a regular high school diploma for the purposes of determining the termination of services under IDEA.

Discussion: Consistent with the definition of ''regular high school diploma'' in section 8101(43) of the ESEA, as amended by the ESSA, a regular high school diploma must be fully aligned with State standards, and may not be aligned with the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. We agree with commenters that graduation from high school with a State-defined alternate diploma does not terminate a student's entitlement to FAPE under IDEA, provided that the student continues to meet the definition of ''child with a disability'' in section 602(3) of the IDEA and is within the State's mandated age range for the provision of FAPE.

Entitlement to FAPE under IDEA could last until an eligible student's 22nd birthday, depending on State law or practice. However, under 34 CFR 300.102(a)(3)(i) a State's obligation to make FAPE available to all children with disabilities does not apply with respect to children with disabilities who have graduated from high school with a regular high school diploma. However, § 300.102(a)(3)(ii) clarifies that this exception does not apply to children with disabilities who have not graduated from high school with a regular high school diploma. Because a State-defined alternate diploma for students with the most significant cognitive disabilities does not align with the definition of a regular high school diploma, graduation from high school with such a diploma does not terminate the obligation of a State and its public agencies to make FAPE available until students awarded such a diploma are appropriately exited from special education and related services in accordance with § 300.305(e)(1) of the IDEA Part B regulations or exceed the age of eligibility for the provision of FAPE under State law. Because the IDEA regulations already address this obligation, no further clarification in these final regulations is needed.

Changes: None.

Extended-Year Graduation Rate

Comments: Several commenters opposed the requirement in proposed § 200.34(d) that would limit an extended-year graduation rate to seven years, and recommended that the Department change the proposed number of years from seven to eight years. Commenters argued that this more closely corresponds with the time period for which States are required to offer a FAPE under the IDEA. One commenter opposed any limitation on the grounds that a State should be allowed to include a student in an extended-year rate, regardless of how long it has taken the student to graduate. Another commenter did not specifically address the limitation, but opposed the requirement that four-year and extended-year graduation rates must be reported separately, asserting that it was not aligned with accountability provisions for alternative schools. Another commenter recommended that the Department provide guidance encouraging States to report extended-year graduation rates in order to capture students that typically take longer than four years to graduate.

Discussion: The Department initially proposed to limit extended-year graduation rates to seven years because it is consistent with the time period in which most States ensure the availability of FAPE and no State currently calculates an extended year rate longer than seven years. We acknowledge, however, that some States provide FAPE for a longer period. In light of such differences across States, the Department is removing the limitation on extended-year graduation rates.

Although we are removing the limitation on extended-year rates, we nonetheless believe that most students not graduating after four years will graduate in five or six years. Further, students with the most significant cognitive disabilities receiving a State-defined alternate diploma within the time period in which most States ensure the availability of FAPE can be included in both the four-year and extended-year graduation rates. For these reasons, the Department encourages States to limit extended-year rates to five or six years in order to capture the most meaningful information about student graduation outcomes for use in reporting and accountability systems.

With respect to the recommendation that States and LEAs not be required to report the four-year and extended-year rates separately, and that instead States and LEAs should be able to report only one, we note that section 1111(h)(1)(C)(iii)(II) of the ESEA, as amended by the ESSA, specifically requires reporting on four-year graduation rates and, if adopted by the State, extended-year graduation rates. If a State chooses to implement an extended-year graduation rate, such information is most useful if reported separately from the four-year rate so that stakeholders can see the differences in graduation rate outcomes in the additional years beyond the four-year rate. Consequently, the Department believes that it is important that those rates be reported separately.

We appreciate suggestions from commenters about topics for potential guidance on this issue. Should we determine that further guidance is needed related to this issue, we will take these comments into consideration.

Changes: The Department has revised § 200.34(d)(2) to remove the

requirement that an extended-year graduation rate cannot be for a period longer than seven years.

Standard Criteria for Including Certain Subgroups

Comments: Many commenters responded to the Department's directed question seeking input on whether to create standard criteria for including children with disabilities, English learners, children who are homeless, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate calculation. A number of commenters supported standardizing the criteria for including students within these subgroups in the graduation rate calculation. Commenters generally addressed only one or two of the subgroups identified in the question, and, together, the comments offered different recommendations for different subgroups (*e.g.,* different recommendations for English Learners than students in foster care). A number of commenters submitted comments assuming the Department was suggesting standardizing all students in the directed question.

Some commenters focused generally on standard criteria for all four subgroups identified in the directed question. Several of these commenters supported basing a student's inclusion in a subgroup on being part of that subgroup at any time during the cohort period. Several commenters supported creating standard criteria, but suggested either different criteria based on the specific characteristics of the subgroup, or getting input from stakeholders, such as States and advocates, about the appropriate criteria for each subgroup.

Several commenters opposed requiring standard criteria, specifying that the decision should be left to States. Of these, two commenters included recommendations for the Department to consider if it decided to require standard criteria. One commenter recommended including students in the subgroup if they were part of that subgroup at any time during the cohort period. The other recommended that the Department consider current practices of States and align the requirements to the method used by a majority of States.

Many commenters addressed children with disabilities specifically. The majority of commenters supporting standardization suggested including children with disabilities if (1) they were a member of the subgroup at graduation and (2) they had spent the majority of their time in high school in the subgroup. The rest of the supporting commenters suggested varied approaches for standardization (*e.g.,* at any time, at the time of graduation).

Some commenters addressed English learners specifically. One commenter requested special criteria and additional disaggregation for students who are English learners and have been part of Native American Language Schools and Programs for at least six years. Other commenters supported requiring standard criteria, but suggested different approaches for determining those criteria. Commenters suggested: Basing a student's membership in a cohort if they were part of that subgroup at any time during the cohort period; requiring standard criteria appropriate to the characteristics of the subgroups; and aligning the criteria with other definitions associated with English learners (*e.g.,* aligning with long term English learners or including former English learners).

Many other commenters addressed concerns related to students who are homeless and students who are in foster care specifically and supported requiring standard criteria. All commenters supporting standard criteria for these groups suggested basing a student's membership in a cohort on whether they were part of that subgroup at any time during the cohort period and emphasized that this is particularly important for these groups since they may move in and out of that subgroup multiple times while they are in school and point in time counts would underrepresent the population. A subset of these commenters suggested that graduation rates should be reported both for students that were part of that subgroup at any time during the cohort period and students who were part of that subgroup at the time of graduation. Commenters indicated that if only one rate for these groups was possible, their preference was for the former. One commenter requested additional clarity regarding the assignment of students to particular subgroups. The commenter requested clarity as to whether a student could be assigned to multiple subgroups (*e.g.,* the English learner subgroup and the children with disabilities subgroup), or if a student could only be assigned to one. If the latter, the commenter requested information on which group would take precedence.

Discussion: We agree that requiring standard criteria for the inclusion of specific subgroups in the graduation rate calculation will make the data more useful. One of the key reasons for requiring an adjusted cohort graduation rate is to ensure that all States use a consistent graduation rate calculation, which allows data to be compared across States. While differences in graduation rate requirements mean that there will continue to be some limitations to the comparability of the data, we believe that any step that improves the comparability of the data will improve the ability of parents and other stakeholders to use the data as intended. We note that this standard criteria is solely for the purpose of calculating and reporting on graduation rate data.

We disagree with the recommended approach of those commenters that supported standardizing the criteria for how children with disabilities are included in the cohort graduation rate calculation. The commenters suggested including children with disabilities if (1) they were a member of the subgroup at graduation and (2) they had spent the majority of their time in high school in the subgroup. The Department is unaware of any State that currently uses this approach when including children with disabilities in the cohort. Moreover, the Department believes that States, LEAs, and schools should be able to count children with disabilities if such children remain in that subgroup throughout high school or if they successfully exit from special education services in high school, as the data represent the long-term effort by States, LEAs, and schools to serve these students. The Department is also concerned that following the suggested approach could encourage States to unnecessarily retain some higher functioning students with disabilities in special education services in order to count these students in the disability subgroup. Additionally, we note that, under § 299.14(c)(5), each State must assure that it has policies and procedures in place regarding the appropriate identification of children with disabilities consistent with the child find evaluation requirements in section 612(a)(3) and (a)(7) of the IDEA. We feel confident that this will mitigate against the risk of students being inappropriately identified.

In response to commenters indicating that a student should be included in the English learners subgroup for purposes of reporting the adjusted cohort graduation rate if he or she was part of that subgroup at any time during the cohort period, we are revising § 200.34(e)(2) to require this practice for the limited purpose of reporting the adjusted cohort graduation rate under the ESEA. As with students with disabilities, this approach under the ESEA recognizes the long-term effort by States, LEAs, and schools to serve these students even if they are not English learners at the time they graduate.

We agree with commenters indicating that students who are homeless and students who are in foster care should be included in those subgroups for purposes of reporting the adjusted cohort graduation rate if they were part of the subgroup at any time during the cohort period. We agree that these students will move in and out of these subgroups depending on their current situation and that only capturing these students at the time of graduation would risk significantly underreporting these students.

On balance, the Department believes that the final regulations will create more consistency in graduation rate reporting for specific subgroups, which is an important improvement to current reporting practices which have made it difficult to compare certain subgroups across States. We believe that the long term benefits of increasing the comparability across States outweigh the interruption of the longitudinal data and the one-time effort to change business rules. Further, it seems appropriate to use this opportunity to require this approach for subgroups newly required for purposes of reporting adjusted cohort graduation rates under the ESEA, as amended by the ESSA, (*i.e.,* students who are homeless and students in foster care) to ensure that students in these groups are appropriately and consistently captured in graduation rates.

We note that a number of commenters indicated that further disaggregation of certain subgroups would provide the most useful information for understanding student graduation outcomes. While we understand that this information may be useful, the statute includes a specific list of subgroups for which disaggregation is required. As such, the Department will not require further disaggregation; however, States and LEAs are free to add further information to their report cards if they believe that further detail will convey useful context for their stakeholders.

Additionally, the Department notes that a commenter requested further clarification about subgroup inclusion. In this regard, we note that students can be included in multiple subgroups, and we expect that an individual student will be counted in any subgroup that applies to that student. For example, a student with a disability who is also an English learner would be counted in both subgroups.

Changes: We have added § 200.34(e)(2), which requires a State to include children with disabilities, English learners, children who are homeless, and children who are in foster care in the respective subgroup for the limited purpose of reporting the adjusted cohort graduation rate under the ESEA, if such students were identified as a member of the subgroup at any time during the cohort period.

Transfers to Prisons or Juvenile Facilities

Comments: A number of commenters supported the Department's clarification related to cohort removal for students transferring to prison or juvenile facilities, and the requirement under proposed § 200.34(b)(3)(iii) that these students can be removed from the cohort only if they participate in a program that culminates in the award of a diploma aligned to the statutory requirements. These commenters also suggested revisions to the requirement, including revising it to align with the statute, which defines ''transferred out'' as having transferred to an educational program ''from which the student is expected to receive'' a regular high school diploma or State-defined alternate diploma, as opposed to the proposed regulation, which focused on a student's transfer to a program ''that culminates in the award of'' a regular or State-defined alternate high school diploma. Many commenters also requested that the Department clarify that a student can be removed from the cohort only if he or she has been adjudicated as delinquent, and one commenter further suggested that the student must also be enrolled in an educational program in a prison or juvenile facility for at least one year.

Many commenters suggested further clarifying the requirement in a number of other ways, including by specifying that, to be removed from a sending school's cohort, a student must be ''meaningfully participating'' in an education program while in a prison or juvenile facility, that documentation of the transfer must include written confirmation of the student's enrollment in an educational program from which he or she can expect to receive a regular high school diploma, and that the provisions related to partial enrollment also apply to students in prison or juvenile facilities. A few commenters recommended adding a requirement to disaggregate graduation rate data for students who are in the juvenile justice system.

Two commenters opposed the proposed requirement, indicating that States may have trouble complying because they may lack authority over juvenile facilities and students in those facilities. One commenter noted that it would not be possible to produce consistent data across States.

Several commenters requested further guidance from the Department about responsibilities for educating students in juvenile facilities. Most of these commenters requested that the Department address the timing for transferring a student from the sending school, the process for transferring a student from a prison or juvenile facility back into a school, and requirements for oversight and accountability of schools in these facilities. One commenter requested further clarification on which LEA is responsible for a student that enters a prison or juvenile facility that does not award the applicable diploma types.

Discussion: We appreciate the comments noting that certain proposed regulatory language differed from the statutory language, and agree that it is more appropriate to use the statutory language. We also agree with commenters who suggested that a student must be adjudicated as delinquent, and that it must be clear that the student will be enrolled in a program from which he or she can expect to receive a regular high school diploma or State-defined alternate diploma, before the student can be removed from the sending school's cohort. Students who are awaiting hearings and who have not yet been adjudicated as delinquent may end up in a different facility, may transfer to another school, or may be released and return to their sending school. As such, the result of the adjudication and the student's placement should be clear before the student is removed from the cohort.

We also agree that a student should not be removed from a cohort unless the student will be in a facility long enough that he or she can expect to receive a regular high school diploma or, if applicable, a State-defined alternate diploma for students with the most significant cognitive disabilities from the facility. While the Department does not agree with comments suggesting that a student must remain in the facility for at least a year before being removed the sending school's cohort, the Department does believe that it is reasonable to clarify that a student should be in a facility long enough to receive a diploma from that facility. Otherwise, the student should remain in the cohort of the sending school, since the student would be expected to transfer back to the sending school before the time of his or her graduation. Further, upon a student's release from a prison or juvenile facility, it is critical for the LEA or school that the student previously attended to re-engage with the student to ensure a positive and supportive

transition that provides a pathway to a regular or State-approved alternative high school diploma. The Department encourages LEAs and schools to maintain an open line of communication with prisons and juvenile facilities to help ensure that students who are assigned to, and ultimately released from, such facilities receive an appropriate education and do not disappear from a graduation cohort.

The Department appreciates the suggestion that a student must ''meaningfully participate'' in an education program in a prison or juvenile facility, but, given the inherent challenge in defining that term, we decline to add it to the regulation. We do, however, encourage States to implement procedures to ensure that educational programs in prisons and juvenile facilities are of high quality.

The Department does not believe that it is necessary to revise the language on partial enrollment to clarify that the requirements related to reporting on students partially enrolled also apply to students in juvenile facilities. The Department believes that the language as written will apply to those facilities, and that adding specific language to that section will not clarify the requirement, but will instead create confusion.

The Department notes that some commenters have indicated that disaggregating data for students in juvenile justice facilities will provide useful information for understanding their graduation outcomes. While we understand that this information may be useful, we decline to expand the statutory list of subgroups for which disaggregation is required. We note, however, that States are free to add to their report cards information that they believe will be useful for their stakeholders.

We appreciate suggestions from commenters about topics for potential guidance on this issue. Should we determine that further guidance is needed related to this issue, we will take these comments into consideration.

Changes: We have revised § 200.34(b)(3)(iii) to align with statutory language by replacing the phrase ''culminates in the award of'' with the phrase ''expected to receive'' a diploma. The Department has further revised § 200.34(b)(3)(iii) to clarify that, in order for students that transfer to a prison or juvenile facility to be removed from a cohort, there must first be an adjudication of delinquency and the student must be expected to receive a regular high school diploma or State-defined alternate diploma during the period in which the student is assigned to the prison or juvenile facility.

Cross Reference to the Assessment Regulation

Comments: None.

Discussion: In defining ''alternate diploma'' under proposed § 200.34(c), the Department cross-referenced a proposed requirement in § 200.6(d)(1) related to assessment requirements under title I, part A, of the ESEA, as amended by the ESSA, that was subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus. This proposed requirement, included in a notice of proposed rulemaking published in the **Federal Register** on July 11, 2016, would require a State to adopt guidelines for IEP teams to use when determining which students with the most significant cognitive disabilities should take an alternate assessment aligned with alternate academic achievement standards, including a State definition of students with the most significant cognitive disabilities. These proposed requirements have not been finalized and, as a result, the Department is removing this language from the final regulations.

Changes: We have revised § 200.34(c)(3)to remove references to proposed § 200.6(d)(1).

Section 200.35 Per-Pupil Expenditures

Student Count Procedure

Comments: One commenter supported the use of an October 1 membership count as the uniform denominator used in per-pupil expenditure calculations. Several commenters, however, noted that many States define student counts for State-determined school finance formulas using a date other than October 1 and, as a result, States could be required to collect additional enrollment count data to comply with the requirements in proposed § 200.35(c)(2). Several commenters recommended that we revise the requirement to provide States greater flexibility, by, for example, requiring States to specify a uniform statewide definition of student count, requiring a State and its LEAs to use the same student count for per-pupil expenditures as is used for State funding allocations, or allowing States to select either the October 1 count or the student count the State uses for State funding allocations.

Discussion: We acknowledge that States use various methods to measure student enrollment for use in State-determined school finance formulas. However, all States annually report to NCES, by LEA and school for every grade that is offered, a uniform membership count (*i.e.,* enrollment) of all students to whom each LEA provides a free public education on or about October 1. This measure is a count of the number of students for whom the reporting LEA is financially responsible and is collected annually by NCES through Common Core of Data (CCD) collection. This information is then used to calculate per-pupil expenditures by LEA and State, as reported by NCES through the National Public Education Financial, LEA Finance (F–33) surveys, and by school, as reported to NCES through the pilot School-Level Finance survey. We recognize that SEAs also report average daily attendance (ADA) data to NCES to determine the average State Per Pupil Expenditure (SPPE) for elementary and secondary education. But because ADA data is not comparable across States, we elect to follow the NCES convention of using membership data to calculate and report expenditures per pupil for public reporting purposes. Further, by establishing minimum requirements that align with existing data collections we are limiting the burden on States and LEAs for complying with this new statutory requirement.

Therefore, to encourage consistent, fair, and aligned reporting practices across States and LEAs, we decline to change the manner in which the number of students is determined for purposes of calculating per-pupil expenditures. We are, however, modifying the regulation to clarify that the NCES CCD enrollment count data that is used to calculate per-pupil expenditures for annual report card purposes must reflect enrollment data from ''on or about'' October 1.

Changes: We have revised § 200.35(c)(2) to clarify that the denominator used for purposes of calculating per-pupil expenditures must use the student count data from ''on or about'' October 1, consistent with the figure reported to NCES.

Comments: Several commenters asked if the per-pupil expenditure denominator should include preschool students and if preschool students are included in the membership count collected by NCES.

Discussion: The CCD collection includes an annual count of students, which includes students in the group or classes that are part of a public school program that is taught in the year or years preceding kindergarten. Therefore, the expenditure denominator should include preschool students.

Changes: We have revised § 200.35(c)(2) to clarify that the denominator used for purposes of calculating per-pupil expenditures must

include preschool enrollment, consistent with the universe portion of the school CCD collection student membership definition.

Account Code Definitions

Comments: Many commenters requested that the Department specify account code definitions to enable States to calculate per-pupil expenditures. For example, one commenter supported the proposed rule because it would ensure all schools have fair and equitable access to funds and would broaden public knowledge of resource disparities, but requested that the Department require States and LEAs to implement a uniform chart of accounts that identifies additional categories of expenditures to increase transparency. A number of other commenters stated that proposed § 200.35 is ambiguous about the definition of private funds. One commenter proposed a different set of expenditure categories to include on report cards than those in the proposed regulations.

Discussion: We agree with commenters that definitions should be clear for all entities calculating and reporting per-pupil expenditures. We also believe, where feasible, calculations should be uniform across States and consistent with existing data collections, so that the public can easily compare and contrast school system spending patterns. To this end, the final regulations clearly specify the composition of the numerator and denominator for the calculation, including the types of expenditures that must be included. Additionally, to the extent possible, § 200.35 aligns current expenditure reporting requirements with existing NCES collection procedures.

However, we do not specify or require the use of particular account codes because we believe that States should have flexibility to develop and implement the uniform statewide procedures for calculating and reporting per-pupil expenditures that work best for the unique configurations and capacities of their LEAs and schools. Nevertheless, we encourage States to adopt statewide account code definitions aligned with those found in the NCES Financial Accounting for Local and State School Systems handbook (NCES handbook, available at: *http://nces.ed.gov/pubs2015/2015347.pdf*), in recognition of the fact that States already use these definitions for existing NCES data collections and their adoption for the purpose of calculating per-pupil expenditures thus would minimum the administrative burden of meeting the new reporting requirements.

Changes: None.

Classification of Expenditures

Comments: Many commenters requested clarification as to whether local funds should include local revenue from rent/royalties and fees collected and expressed concern that the proposed regulation does not account for other Federal funds that are similar to Impact Aid. Another commenter requested guidance on how to report final Impact Aid payments made during the preceding fiscal year.

Discussion: We generally believe that States have both the discretion and the responsibility to clarify the composition of local revenues as well as other revenue classifications as part of developing their statewide procedures for calculating LEA- and school-level expenditures per pupil. As noted previously, we encourage States to adopt NCES handbook account code definitions, but decline to prescribe additional requirements in these final regulations. However, we do believe that funding from other Federal programs designed offset losses in local tax revenues should be counted as State and local funds, and we are revising the final regulations accordingly. The Department will consider providing additional information on these types of Federal programs, along with suggestions on how to report final Impact Aid payments made during the preceding fiscal year, in non-regulatory guidance.

Changes: We have revised § 200.35(a) and (b) to clarify that State and LEA report cards must, when reporting per-pupil expenditures, include with State and local funds all Federal funds intended to replace local tax revenues.

Implementation Concerns

Comments: Several commenters expressed concern that States and LEAs lack sufficiently detailed data or accounting systems to collect and report school-level expenditures, making the proposed requirements costly, impractical, burdensome, and likely to yield little useful information. One commenter stated that the regulations would force LEAs to invest significant resources to report school-level expenditures that ultimately will not provide a meaningful measure of expenditure reporting.

Discussion: We disagree with the concerns that school-level reporting of expenditures may not provide valuable insight to local administrators and agree with other commenters who have asserted that these data will be an important source of information for administrators, parents, and local stakeholders.

Changes: None.

Comments: One commenter suggested the Department require only personnel costs to be reported at the school level because of the difficulty of reporting other types of expenditures that are shared by schools within an LEA. Many commenters stated specifically that centrally managed support services, such as food service or transportation, are not easily disaggregated or reported at the school level. Two commenters suggested that the Department adopt more detailed requirements for expenditure reporting at the school and LEA levels.

Many commenters requested further clarification of the requirements, including, for example, specifying a uniform standard procedure for allocating expenditures at the school level or even requiring LEAs to assign all expenditures to the school level.

One commenter stated that the ESEA, as amended by the ESSA, allows central office expenditures to be excluded from school-level reporting and that assigning expenditures to individual schools would be complicated by different LEA accounting methodologies, resulting in data quality issues.

One commenter suggested the Department add requirements that LEAs report the comparison between LEA average expenditures and individual schools and the percentage of LEA expenditures on administration and shared services. One commenter expressed concern over the reporting procedures for State payments to private preschool providers. One commenter recommended that the Department not specify an order of operation for calculating per-pupil expenditures, stating that some States are capable of calculating school-level expenditures without LEA reports.

Discussion: We appreciate the varied suggestions offered by commenters, which collectively demonstrate both the importance and difficulty of producing uniform and clear per-pupil expenditure data at the school and LEA levels. We also acknowledge the decision to report certain types of expenditures only at the LEA level requires serious deliberation that considers the merits of alternative reporting approaches. However, we also believe such decisions are best made by States, with input from local stakeholders. For this reason § 200.35 requires States to develop and clearly describe the statewide uniform procedures that delineate which expenditures are reported at the school and LEA levels, including how school-

level expenditures are reported as they relate to LEA expenditures.

Based on the comments received, it also appears some commenters may have misinterpreted the proposed regulations. Although States will determine which expenditures are reported at the school level, under proposed § 200.35 it is up to States to determine if expenditures such as superintendent salaries or food service costs are excluded from school-level reporting and only reported at the LEA level.

In addition, we believe that the establishment of national uniform school-level reporting procedures could stifle innovative approaches to reporting per-pupil expenditures and would fail to take into account local considerations and State laws. Because the statewide approaches will be uniformly applied within a State, implementation of proposed § 200.35 preserves the ability of within and cross-LEA comparisons of per-pupil expenditures.

Changes: None.

Comment: One commenter asked the Department to clarify the meaning of expenditures not allocated to public schools and whether school-level expenditures in aggregate equal total LEA expenditures.

Discussion: We believe it is necessary to clarify how current expenditures not reported at the school level are reported and are revising the final regulations accordingly.

Changes: We have revised § 200.35(a)(2) and (b)(2) to clarify that State and LEA report cards must report the total current expenditures that were not reported in school-level per-pupil expenditure figures.

Comment: One commenter stated that reporting school-level expenditures would cause the increased use of pull-out models of instruction for students.

Discussion: We disagree with the concerns that school-level reporting of expenditures could cause increased use of pull-out models of instruction for students and are unaware of research demonstrating a link between school-level expenditure reporting and commensurate shifts in the use of pull-out instruction for students.

Changes: None.

Reporting Exemptions

Comments: Several commenters requested an exemption for small and rural LEAs from the per-pupil expenditure reporting requirement, suggesting such an exemption would be consistent with similar exemptions under other title I provisions.

Discussion: While the ESEA, as amended by the ESSA, includes special provisions for rural and small LEAs in a number of areas, there is no such provision related to the reporting requirement for per-pupil expenditures under section 1111(h)(C)(x). Moreover, advocates for rural and small LEAs have long expressed concerns about funding equity and other resource challenges faced by such LEAs, and reporting on per-pupil expenditures will support greater transparency and analysis around such concerns. Identifying resource disparities among LEAs of all types is a key goal of the new per-pupil expenditures reporting requirement, and we do not believe excluding the one-third to one-half of all LEAs that are small and/or rural from the new requirement would be consistent with this goal.

Changes: None.

Comments: A number of commenters addressed the inclusion of expenditures from private sources in per-pupil expenditure reporting, with some commenters requesting clarification on the exclusion of private funds, others recommending that the final regulations require that they be included, and one commenter asking the Department to encourage States and LEAs to include them voluntarily.

Discussion: Under section 1111(h)(1)(C)(x) of the ESEA, as amended by the ESSA, States and LEAs must report per-pupil expenditures of Federal, State, and local funds. Funds from private sources do not fall within any of these three categories, which encompass only public funds. Therefore, § 200.35 requires the exclusion of private funds from per-pupil expenditure reporting. We nonetheless encourage States and LEAs to consider improving transparency around education finances by including the reporting on the use of private funds for public educational purposes.

Changes: None.

Disaggregating Per-Pupil Expenditure Data

Comments: Some commenters supported the requirement in proposed § 200.35(a)(1)(i)(B) and (b)(1)(i)(B) that per-pupil expenditures must be disaggregated by (1) Federal and (2) State/local funds. One commenter claimed, however, that the ESEA, as amended by the ESSA, requires that per-pupil expenditures be disaggregated separately for Federal, State, and local funds and requested that proposed § 200.35 be revised to also require disaggregation of State and local funds. Another commenter recommended further disaggregating per-pupil expenditures by grade level.

Discussion: We appreciate the commenters support for the method of disaggregating Federal, State, and local funds in § 200.35(a)(1)(i)(B) and (b)(1)(i)(B). The Department disagrees with the commenter claiming the ESEA, as amended by the ESSA, requires that Federal, State, and local funds be separately disaggregated. Although the section 1111(h)(1)(C)(x) of the ESEA, as amended by the ESSA, requires that per-pupil expenditures be disaggregated by source of funds, it does not specify the level at which such disaggregation must occur. Thus, § 200.35(a)(1)(i) and (b)(1)(i) clarify that a State and its LEAs are required to report per-pupil expenditures in total (*i.e.,* including all Federal, State, and local funds) and disaggregated by (1) Federal funds, and (2) State and local funds. Because typical LEA accounting procedures do not require State and local funds to be separately tracked, implementation of the commenter's proposal would be impractical, complicated, and would likely result in the dissemination of inaccurate fiscal data to the public. Further, States with more sophisticated accounting systems that are able to disaggregate per-pupil expenditure reporting by Federal, State, and local funds are not precluded from including such data on their report cards. Similarly, States are welcome to include disaggregated per-pupil expenditure data by grade level on annual State and LEA report cards, but it is not required under the ESEA, as amended by the ESSA.

Changes: None.

Uniform Statewide Procedure

Comments: Many commenters supported the regulations proposed § 200.35, arguing that the regulations will increase transparency in a manner that will allow the public to identify and address financial inequities within a State. Several commenters strongly supported the requirement in proposed § 200.35(c) that States develop a single statewide procedure for LEA and State use, arguing implementation of these regulations will allow the public to hold States, LEAs, and school leaders accountable for ensuring that schools and LEAs serving traditionally underserved populations are provided the resources they need to succeed academically. Commenters also stated the uniform procedure requirement will allow for consistent presentation of financial data that can be used to evaluate how investments impact student outcomes, which will result in more informed budgetary decisions by local policymakers. Several commenters recommended removing the uniform

statewide procedure requirement to allow States and LEAs to calculate per-pupil expenditures in the manner they determine appropriate.

Discussion: The Department appreciates the support of commenters, including the specific support for the uniform procedures requirement in § 200.35(c). The Department disagrees with the commenter regarding the removal of this provision. We agree the commenters in support of this requirement that absent standard definitions and a statewide procedure for calculating expenditures, per-pupil expenditure data would not be comparable and would not support meaningful analysis of resource inequities between and within LEAs and schools across a State.

Changes: None.

Alignment With Existing Data Collection Requirements

Comments: Several commenters suggested the development of a statewide school finance reporting system that is able to comply with proposed § 200.35 requirements would be onerous and recommended that States report in a uniform manner as determined by the State. One commenter asked if the Department will align with NCES's fiscal collection requirements and whether NCES will cease publishing fiscal collection results once per-pupil expenditures are disseminated through annual State and LEA report cards. One commenter argued a universal per-pupil expenditure reporting requirement is incongruous with the recent increase of the single-audit expenditure threshold for non-Federal entities from $500,000 to $750,000.

Discussion: In clarifying the per-pupil expenditure reporting requirements under the ESEA, as amended by the ESSA, the Department sought to align these requirements, to the extent practicable, with the requirements of the NCES National Public Education Financial Survey, the LEA Finance survey (F–33), and the School-Level Finance pilot survey. We believe this approach will allow for more efficient administration of new collection and reporting processes. We note, however, that the new ESEA reporting requirements will not replace NCES reporting of national expenditure survey data, which will continue to be of use to education researchers, policymakers, and the public because they allow for precise comparisons of LEA and SEA spending patterns over time. Further, existing NCES collections are not as timely as State and LEA report cards and do not report on school-level expenditures.

Regarding the comment referencing the Uniform Administrative Requirements, Cost Principals, and Audit Requirements in part 200 of title 2 of the Code of Federal Regulations, the Department disagrees with claims that single audit requirements are misaligned with per-pupil expenditure requirements, as these separate requirements are in place for different purposes under different regulations. The administration of a single audit ensures that Federal funds are expended properly, while universal per-pupil reporting requirements ensure the public has access to comparable fiscal data.

Changes: None.

Data Interpretation

Comments: Two commenters questioned the value of reporting per-pupil expenditures, arguing such reporting can be misleading depending on local factors such as cost-of living.

Discussion: Under section 1111(h)(1)(C)(x) of the ESEA, as amended by the ESSA, States and LEAs must report per-pupil expenditures of Federal, State, and local funds. The Department agrees that the per-pupil expenditure data collected and reported under § 200.35 must be presented and analyzed with care, taking into account within-State variations based on multiple factors, including differences in the cost of education. However, we anticipate that States will include such context, where appropriate, in their presentation of per-pupil expenditure data on State and local report cards. For example, a State could choose to also provide cost-of-living adjusted data on its report card if it determined this would be valuable for accurate cross-district comparisons.

Changes: None.

General Opposition

Comments: A numbered of commenters expressed opposition to proposed § 200.35, variously claiming that its provisions are not required or are inconsistent with the requirements of the ESEA, as amended by the ESSA; that the proposed regulations exceed the Department's authority; that requiring uniform procedures for calculating per-pupil expenditures could limit SEA and LEA flexibility to meet local needs; that reporting per-pupil expenditures could lead to pressure to equalize education funding, including for charter schools; and that it is not clear how such reporting will affect compliance with the title I, part A supplement not supplant or comparability requirements. In response to such concerns, commenters generally recommended either striking the provisions of the proposed regulations that are not explicitly required under the ESEA, as amended by the ESSA; making such provisions permissive; or replacing most of proposed § 200.35 with non-regulatory guidance.

Discussion: Section 200.35 clarifies reporting requirements established by section 1111(h)(1)(C)(x) of the ESEA, as amended by the ESSA, so that local policymakers, parents, and the public can easily understand how public education funds are distributed across LEAs and schools. The regulations establish minimum requirements to ensure timely access to comparable spending data, but do not mandate equal per-pupil funding at the LEA or school level, prescribe how such data should be used in implementing supplement not supplant or comparability requirements, or require reporting of additional information to the Department beyond that required by statute. Further, as discussed previously under *Cross-Cutting Issues,* the Department has rulemaking authority under section 410 of GEPA, section 414 of the DEOA, and the section 1601(a) of the ESEA, as amended by the ESSA. Given that rulemaking authority and that the regulations fall squarely within the scope of title I, part A of the statute, consistent with section 1111(e), it is not necessary for the statute to specifically authorize the Secretary to issue a particular regulatory provision.

Changes: None.

Section 200.36 Postsecondary Enrollment

Definition of Programs of Postsecondary Education

Comments: Two commenters supported the proposal in § 200.36(a)(2) to define ''programs of postsecondary education'' in the same manner as ''institution of higher education'' as that term is defined under the Higher Education Act of 1965, as amended (HEA). One commenter expressed concern about the definition, indicating that it was unclear how it would accommodate programs specific to children with disabilities that grant certificates instead of degrees. One commenter disagreed with the rationale for using the HEA definition (to promote consistency in data reporting and allow users to compare across States), indicating that the use of this definition would not create comparability across States due to different sizes and structures of postsecondary systems across States.

Discussion: We agree with the comments supporting the proposal to define the term ''programs of postsecondary education'' to align with the definition of ''institution of higher education'' used in the HEA. We believe that it is important that States report on enrollment in accredited two- and four-year institutions, as specified in the existing HEA definition. With respect to the concerns raised about comparability across States, we acknowledge that this definition does present limitations for cross-State comparisons due to the differences in postsecondary structures across States. Nonetheless, we believe that requiring the use of the HEA definition will promote consistency in data reporting, since all States will be including postsecondary institutions based on the same parameters.

We do not agree that the definition should accommodate students with disabilities who receive certificates of completion. This metric is intended to capture postsecondary enrollment of students earning diploma types consistent with the graduation rate requirements in § 200.34. States are able to include additional metrics of postsecondary actions if they wish to provide more robust information to parents and other stakeholders.

Changes: None.

Postsecondary Indicators

Comments: Some commenters requested adding further indicators related to postsecondary activities to the regulations. Some commenters noted that the postsecondary indicators were solely focused on entry into education programs and suggested that they be expanded to include other postsecondary actions such as community-based roles, the military, job training programs, or service organizations. Two commenters recommended including language indicating that postsecondary enrollment includes additional metrics, such as the number of courses taken without the need for remediation and postsecondary completion. One commenter requested disaggregation of postsecondary enrollment data by students receiving a regular high school diploma and students receiving an alternate diploma; and another commenter requested disaggregation by two- and four-year institutions. This commenter also requested that the Department require additional information on numbers of students receiving scholarships or grants.

Discussion: We appreciate commenters who indicated that there are important postsecondary metrics, including metrics beyond enrollment in programs of postsecondary education, that provide a more comprehensive picture of student actions after high school. We agree that there are many important postsecondary indicators that would provide parents and other stakeholders with useful information.

However, the Department is cognizant of the many reporting requirements already included in the State report card, as well as the particular challenge involved in linking secondary and postsecondary information. As such, the Department declines to impose additional burden on States by requiring additional postsecondary measures on State and LEA report cards. We note, however, that at its discretion a State may choose to include additional information on report cards.

Changes: None.

Providing Information ''Where Available''

Comments: Several commenters expressed support for the language in § 200.36(c) clarifying that postsecondary enrollment data is ''available'' and therefore must be reported under proposed § 200.36(a) if a State is obtaining it or if it is obtainable, and that States that cannot meet the reporting requirement must include on report cards the year in which they expect complete data to be available. Of these, one commenter specifically expressed support for part of the Department's rationale, which stated that at least 47 States can currently produce high school feedback reports, and encouraged the Department to consider guidance on making data as transparent and accessible as possible. Two commenters expressed concern with the requirement, indicating that there would be an ongoing cost associated with meeting the requirement. One commenter additionally detailed the current challenges and burden of obtaining data from postsecondary institutions due to privacy legislation, necessity to work with multiple entities, data quality issues, and the challenge in capturing students in private and out-of-State institutions. One commenter suggested that the Department should consider a funding mechanism that would enable the use of National Student Clearinghouse data for all States.

Discussion: We appreciate comments supporting the requirement to clarify the meaning of ''available.'' As noted by one commenter, many States already have the capacity to report on at least some postsecondary enrollment data, indicating that most States should be able to meet the requirement to track some, if not all, students in a graduating class. This requirement is intended to ensure that as many States as possible make postsecondary enrollment information available so that parents and stakeholders have access to information about how successfully each public high school is in graduating students who go on to enroll in postsecondary programs. Additionally, reporting publicly on when data will be available if they are not already available will encourage States not currently able to meet the requirements to obtain and make available this information.

We recognize that linking secondary and postsecondary data systems is challenging and requires an investment in new system infrastructure and processes. States are free to obtain the data from any source available to them, and States currently linking their systems approach this in a number of ways. Some States use the National Student Clearinghouse, which houses the most comprehensive information on postsecondary actions, but also requires an ongoing investment. States are not required to use this source, and some States are developing other innovative ways of obtaining data, including data sharing agreements or memoranda of understanding with other agencies. States engaging in data sharing agreements may contribute data to centralized repositories (centralized model), or store data separately and link data on demand (federated model). Acknowledging the added challenge of obtaining data on private or out-of-State institutions, Congress specifically differentiated requirements for those institution types compared to public, in-State institutions by adding ''to the extent practicable'' to the statutory requirements. The Department understands that new data elements, particularly those that involve the complexity of navigating multiple systems, will have data quality challenges; however, we believe that States need to continue to proactively develop the necessary processes to report these metrics in order for critical information on postsecondary actions to improve. States should clearly document limitations in their reported data to ensure that it is interpreted appropriately.

The Department also understands that data-sharing agreements can create privacy concerns and encourages States to use the Department's Privacy Technical Assistance Center, which provides resources on best practices for ensuring the confidentiality and security of personally identifiable information.

Changes: None.

Other

Comments: One commenter indicated that students should only be counted in the numerator as enrolling in a program of postsecondary education if they have enrolled in credit-bearing coursework without the need for remediation.

Discussion: We appreciate the desire to ensure that the postsecondary enrollment metric is a meaningful measure of college-readiness. However, the Department also believes that adding further parameters to the requirement creates added burden and many States are still in the early stages of linking their data systems. As such, the Department does not agree that additional parameters should be added to the metric.

Changes: None.

Comments: Two commenters recommended specific topics for guidance. One commenter suggested guidance on building internal capacity within States to establish linkages between K–12 and postsecondary data systems. The commenter further suggested guidance regarding the establishment of governance structure to advise on the management of these systems. One commenter requested guidance about how to treat students who take a gap between their graduation and their enrollment in a postsecondary institution into the postsecondary enrollment calculation.

Discussion: We appreciate suggestions from commenters about topics for potential guidance on these issues. Should we determine that further guidance is needed related to these issues, we will take these comments into consideration.

Changes: None.

Comments: Some commenters expressed concern about the burden associated with the regulations. One commenter indicated general concerns with the burden of new reporting requirements, and noted that postsecondary enrollment data was an example of a new burdensome requirement. They suggested that the final regulations should clarify statutory requirements rather than create new requirements in order to maintain State flexibility to meet statutory requirements. One commenter specifically noted concerns regarding the burden associated with the requirement to disaggregate by subgroup.

Discussion: The statute adds the requirement to collect postsecondary enrollment data and to disaggregate data by subgroup. While commenters are correct that postsecondary enrollment is newly added to statutory reporting requirements, many States have been reporting on postsecondary enrollment under ESEA flexibility. As such, this is a continued requirement for most States, not a new requirement. The Department believes that the regulations clarify statutory requirements by ensuring consistency and maximizing the utility of data reported, but still allowing States the flexibility to determine how to meet the reporting requirement (*e.g.,* the source to use for postsecondary information).

Changes: None.

Section 200.37 Educator Qualifications

Definitions

Comments: Several commenters expressed concerns and some offered suggestions regarding the uniform definitions and requirements in § 200.37. Specifically, several commenters requested that the regulations include additional text to the effect that a State's definitions under proposed § 200.37(b)(1) and (2), as applied to charter schools, must defer to State charter school law. Some commenters requested that the Department require that State and LEA report cards use specific definitions for the term ''inexperienced,'' and the phrase ''not teaching in the subject or field for which the teacher is certified or licensed,'' rather than allowing States to adopt their own statewide definition for use on State and LEA report cards. In addition, some commenters expressed concern with the definition of high- and low-poverty schools in § 200.37, with a few commenters elaborating that these definitions are arbitrary. One of these commenters requested that the Department allow States to define what constitutes a high- and low-poverty school; one commenter suggested defining high- and low-poverty schools based on the percentage of economically disadvantaged students in a school; and one commenter suggested that the definition of high- and low-poverty school reflect title I eligible schools or schools with a specific threshold of students with free and reduced lunch that would warrant title I eligibility.

One commenter indicated that the requirements for educator qualification definitions in §§ 200.37 and 299.18(c)(2) extend beyond that which the statute requires, and, in addition, the different reporting timelines in these sections would be problematic. Another commenter suggested that the timeline for implementing the ESEA, as amended by the ESSA, is overly aggressive and does not provide States with sufficient time to make necessary changes to State law regarding educator qualification definitions. This same commenter further contended that the statute prohibits the Department from mandating that States define certain terms as required in §§ 200.37 and 299.18(c)(2). In a related sentiment, one commenter requested that the Department add text to § 200.37(b) to indicate that States can use definitions for the terms ''inexperienced'' and ''not teaching in the subject or field for which the teacher is certified or licensed'' that may already exist in State law. Another commenter asserted that the requirement in § 299.18(c)(2)(ii) and (iii) that States use the same definitions of ''out-of-field teacher'' and ''inexperienced teacher'' as States adopt under proposed § 200.37(b) will necessitate a change in LEA hiring practices and will preclude them from hiring novice teachers and novice teachers from teaching in a school of their choice.

Discussion: We appreciate suggestions related to the uniform definitions and requirements in § 200.37(b). However, we decline to either add additional requirements related to the definitions of ''inexperienced'' and the phrase ''not teaching in the subject or field for which the teacher is certified or licensed'' as applied to charter schools or to include specific definitions of these terms. Further, we decline to remove or otherwise revise the requirements for these definitions in § 200.37(b).

We believe that standardized statewide definitions of ''inexperienced'' and ''not teaching in the subject or field for which the teacher is certified or licensed,'' adopted by each State and used consistently in reporting teacher qualification data on State and LEA report cards, will ensure transparency and increase understanding of staffing needs in high-poverty and difficult-to-staff schools. Furthermore, we believe that uncovering such needs may encourage States to target efforts to recruit, support, and retain excellent educators in these schools. However, given variation in State laws and contexts, we believe States are best positioned to select the required statewide definitions of ''inexperienced'' and ''not teaching in the subject or field for which the teacher is certified or licensed'' and therefore decline to require use of a particular definition as require under § 200.37.

With respect to defining what constitutes a high- and low-poverty school, we disagree that the definitions are arbitrary as they are consistent with the definitions of these terms under the ESEA, as amended by NCLB. This ensures that States can continue to use

the same definition of these schools that they have used since they began reporting teacher qualification data disaggregated by high- and low-poverty schools. At the State and LEA levels, parents and other stakeholders will be familiar with disaggregated teacher qualification data based on these definitions and better able to consider implications of the information. In light of the benefits of statewide definitions of teacher qualification definitions, the Department believes the requirements in § 200.37(b) align with section 1111(h)(1)(B) and 1111(h)(2)(B) of the ESEA, as amended by the ESSA, to develop State and LEA report cards in an understandable and uniform format.

With respect to commenters asserting that the Department does not have the authority to require definitions of certain teacher qualification terms required under §§ 200.37(b) and 299.18(c)(2) and that the ESEA, as amended by the ESSA, prohibits requirements for such definitions, please see discussion below in § 299.18 in response to other similar comments on this topic. With respect to commenters' concerns that the existing State laws regarding definitions of ''inexperienced'' and ''not teaching in the subject or field for which the teacher is certified or licensed'' would need to be revised, as long as current definitions for these terms meet the requirements under §§ 200.37(b) and 299.18(c)(2), States can, in fact, use them to meet the requirements in §§ 200.37(b) and 299.18(c)(2). As to the impact of the required definitions of these terms being the same in §§ 200.37(b) and 299.18(c)(2), LEAs need not necessarily revise their hiring policies, and could instead implement other strategies, such as modifying teacher recruitment and retention policies and procedures. Nevertheless, regardless of the strategies that an LEA elects to implement, it must report and, as necessary, address any differences in rates.

Finally, regarding the timelines for reporting the information required in § 200.37 not being sufficient for States to meet the requirements, States have been reporting on teachers teaching with emergency or provisional credentials as required under the ESEA, as amended by NCLB. With respect to the teacher qualification reporting requirements new under the ESEA, as amended by the ESSA, as noted previously, States and LEAs can request a one-year, one-time extension of such new requirements. Further, States and LEAs can choose to align the reporting timelines for information reported under § 299.18(c)(2) with the December 31 deadline for State and LEA report cards.

Changes: None.

Other Comments Related to § 200.37

Comments: Some commenters supported the requirements in § 200.37 generally, while others requested additional regulatory text or opposed various provisions. Specifically, a few commenters suggested requiring additional disaggregation of educator qualification data, including by schools with high concentrations of students of color, English learners, and students with disabilities or grade level. One commenter requested that the Department provide guidance to clarify that the categories of teachers reported under proposed § 200.37 are not mutually exclusive. One commenter requested that § 200.37 specifically include as inexperienced teachers those teachers of Native students who do not have experience with Native culture and language. Finally, one commenter expressed concern regarding the elimination of the highly-qualified teacher requirements under the ESEA, as amended by NCLB, and questioned how that interacts with teacher qualification reporting requirements.

Discussion: The Department appreciates support for the requirements in § 200.37. While States and LEAs can calculate and report on teacher qualification data disaggregated by categories in addition to high- and low-poverty schools, the Department declines to require additional disaggregation given the extent of information included on State and LEA report cards required by the ESEA, as amended by the ESSA. Section 1111(h)(1)(C)(xiv) and 1111(h)(2)(C)(2)(iii) provide for States and LEAs to include on report cards any additional information they believe will best provide parents, students, and other members of the public with information regarding the progress of each of the State's public elementary and secondary schools. The Department will take into consideration one commenter's question on the reporting categories under § 200.37 as we consider guidance to support States and LEAs on the implementation of the reporting requirements under the ESEA, as amended by the ESSA. We decline to add regulatory requirements around the term ''inexperienced'' teachers; while we agree with the comment concerning the value of having teachers of Native American students who have experience with native culture or language, States may add these type of requirements if they choose to do so. Finally, regarding highly-qualified teacher requirements, the ESEA, as amended by the ESSA, eliminates the highly-qualified teacher requirements under the ESEA, as amended by the ESSA.[28] Under title I of the ESEA, as amended by the ESSA, the SEA is required to ensure that all teachers and paraprofessionals working in a program supported with funds under title I meet applicable State certification and licensure requirements, including any requirements or certification obtained through alternative routes to certification.

Changes: None.

Other Data—Civil Rights Data Collection Data

Comments: Some commenters requested that the Department specify the data elements that States must report under sections 1111(h)(1)(C)(viii) and 1111(h)(2)(C) of the ESEA, as amended by the ESSA. Specifically, some commenters requested that we clarify in regulations what States must report regarding, for example, the number and percentage of students enrolled in preschool programs, data on chronic absenteeism, and data on incidents of violence.

Discussion: The Department appreciates these comments requesting clarification the information that States need to implement the provisions under section 1111(h)(1)(C)(viii) and 1111(h)(2)(C) of the ESEA, as amended by the ESSA. These provisions require State and LEA report cards to include information as reported under the Civil Rights Data Collection (CRDC) in categories including measures of school quality, climate, and safety, including rates of in-school suspensions, out-of-school suspensions, expulsions, school-related arrests, and referrals to law enforcement; chronic absenteeism (including both excused and unexcused absences); incidences of violence, including bullying and harassment; number and percentage of students

[28] The ESSA also amended the IDEA by removing the definition of ''highly qualified'' in section 602(10) and the requirement in section 612(a)(14)(C) that special education teachers be ''highly qualified'' by the deadline established in section 1119(a)(2) of the ESEA, as amended by NCLB. However, Section 9214(d)(2) of the ESSA amended section 612(a)(14)(C) of the IDEA by incorporating the requirement previously in section 602(10)(B) that a person employed as a special education teacher in elementary school, middle school, or secondary school must: (1) Have obtained full certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination and hold a license to teach in the State as a special education teacher, except that a special education teacher teaching in a public charter school must meet the requirements set forth in the State's public charter school law; (2) not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (3) hold at least a bachelor's degree.

enrolled in preschool programs; and the number and percentage of students enrolled in accelerated coursework to earn postsecondary credit while still in high school. We wish to allow States and LEAs flexibility regarding the particular data elements they use to report information on these categories. We will consider providing additional information about how States and LEAs can meet these requirements as we consider guidance to support States and LEAs on the implementation of the reporting requirements under the ESEA, as amended by the ESSA.

Sections 299.13–299.19 Cross-Cutting Issues

Accessibility of Notices, Documentation, and Information

Comments: Many commenters remarked on the requirements that appear in § 299.13(f) and proposed § 299.18(c)(4)(v), which specifically reference the use of Web sites to publish required information including a consolidated State plan or individual program State plan, and information regarding educator equity. These sections include specific language designed to maximize access to the required information by individuals with disabilities and individuals with limited English proficiency. While a small number of commenters supported the proposed accessibility requirements generally, several of the commenters expressed concern that the requirements do not sufficiently ensure that parents and other stakeholders are able to access the information regarding the consolidated State plan or individual program State plan or the information regarding educator equity. Of the commenters expressing concern, many discussed the accessibility of notices, documentation, and information provided on SEA and LEA Web sites, particularly for individuals with disabilities or individuals with limited English proficiency.

Discussion: The Department agrees with the commenters regarding the necessity of ensuring that all parents and other stakeholders, including those with disabilities and those with limited English proficiency, have meaningful access to the information disseminated under these provisions. Such access is critical to ensure transparency to parents, educators and the public on State plans and educator equity data. Regarding additional regulatory language to ensure that individuals with limited English proficiency can access notices and documentation and information, please see discussion in § 200.21(b)(2). Regarding additional regulatory language to ensure that individuals with disabilities can access the information regarding a State's consolidated State plan or individual program State plan and information regarding educator equity, please see discussion in § 200.30(c). In every instance in § 299.13 where an SEA is required to publish information or data, we are aligning the language throughout the section.

Changes: We have aligned the language in § 299.13(b)(1), (b)(2), (c)(1)(iii)(E), and (f) to require the information to be published ''on the SEA's Web site in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3).''

Section 299.13 Overview of State Plan Requirements

Proposed Removal of All Plan Requirements

Comments: Several commenters recommended removing §§ 299.13–299.19 from the final regulations. These commenters argued that States should be permitted to establish State plan procedures and timelines. Additionally, commenters stated that the Department lacks authority to require a State to provide the specific information detailed in §§ 299.13–299.14.

Discussion: Whether a State submits consolidated State plans or individual program plans, the statute provides the Secretary with authority to establish procedures and timelines for submission. For example the individual program State plans in title II, part A, are generally to be submitted ''at such time and in such manner as the Secretary may reasonably require'' under section 2101(d)(1) of the ESEA, as amended by the ESSA. In regards to consolidated State plans, section 8302(a)(1) of the ESEA, as amended by the ESSA, indicates that the Secretary ''shall establish procedures and criteria under which, after consultation with the Governor, a State educational agency may submit a consolidated State plan or a consolidated State application meeting the requirements of this section.'' Additionally, section 410 of GEPA, 20 U.S.C. 1221e–3, authorizes the Secretary, ''in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, . . . to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.'' Moreover, section 414 of the DEOA similarly authorizes the Secretary to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474.

The regulatory provisions in §§ 299.13–299.19 specify that the State plan requirements are being issued in accordance with the authority granted to the Secretary by GEPA, DEOA, and section 8302 of the ESEA, as amended by the ESSA. With respect to the commenter's specific concern that States should be allowed the discretion to establish State plan procedures and timelines, §§ 299.13–299.19 are not inconsistent with individual program State plan requirements or the consolidated State plan requirements in section 8302 because the Secretary has the authority to establish the time and manner for submission of individual program State plans and establish the procedures and criteria for a consolidated State plan under section 8302.

Changes: None.

Additional Assurances

Comments: Several commenters noted that section 8302(b)(3) of the ESEA, as amended by the ESSA, requires the Department to explicitly include an assurance regarding the equitable participation of private school students and teachers because it is, according to the commenters, absolutely necessary for the consideration of the consolidated State plan. This assurance was not, however, included in the proposed regulations, and the commenters recommend that § 299.13(c) be amended to include it.

Additionally, one commenter requested that States provide the assurances in section 1111(g) of the ESEA, as amended by the ESSA, specifically emphasizing that the Committee of Practitioners has been involved in the development of the State plan.

Discussion: We agree, in part, with these commenters. Section 8302(b)(3) of the ESEA, as amended by the ESSA, contemplates that the consolidated State plan include an assurance of compliance with applicable provisions regarding participation by private school children and teachers. Therefore, we agree with the commenters that this assurance is a necessary part of the consolidated State plan. We are adding § 299.14(c), a new section on consolidated State plan assurances, to include an assurance regarding participation by private school children and teachers.

However, the Department declines to include an additional assurance regarding the Committee of Practitioners. All statutory assurances for covered programs are generally applicable under section 8304(a) of the ESEA, as amended by the ESSA, which requires that each SEA assure that each program covered by the State plan be administered in accordance with all applicable statutes, regulations, program plans and applications. Furthermore, section 8302(b)(3) of the ESEA, as amended by the ESSA, requires the Secretary to include only assurances that are absolutely necessary for the consideration of consolidated State plans. Therefore, we do not think it is necessary to include a specific assurance regarding the Committee of Practitioners.

Changes: We have revised § 299.14 to include a new § 299.14(c) on consolidated State plan assurances, which includes a new assurance regarding State compliance with sections 8501 and 1117 of the ESEA, as amended by the ESSA, regarding participation by private school children and teachers.

Section 299.13(k) Individual Program State Plan Requirements for Title I, Part C

Comments: None.

Discussion: Based on further internal review, the Department is clarifying in final § 299.13(k)(2) that SEAs who choose to submit individual program State plans for title I, part C, must also meet the consolidated State plan requirements in § 299.19(b)(2) in order to address sections 1303(f)(2), 1304(d), and 1306(b)(1) of the ESEA, as amended by the ESSA. The specific requirements are related to the proper identification and recruitment of eligible migratory children and their unique educational needs, consultation, measureable program objectives, and uses of funds. It is essential for all title I, part C State plans, whether submitted as an individual title I, part C State plan or consolidated State plan to address these requirements as they provide necessary information for each SEA and the Department in addressing statutory requirements included in title I, part C of the ESEA, as amended by the ESSA.

Changes: We have added § 299.13(k)(2) to include the specific requirements in § 299.19(b)(2) for title I, part C that a State must also include if it submits an individual title I, part C State plan.

Section 299.13(b) Timely and Meaningful Consultation

Comments: Many commenters supported the Department's proposed requirements for timely and meaningful consultation in § 299.13(b). Commenters appreciated that the requirements emphasized consultation with a variety of stakeholders at various stages of State plan development, including an explanation of how input was taken into consideration. A number of commenters requested that the Department align the requirements with the Secretary's Dear Colleague letter issued on June 23, 2016, regarding stakeholder engagement (Stakeholder Engagement DCL). Many commenters also requested that the Department provide further guidance consistent with the requirements in § 299.13(b) for other ESEA programs. One commenter suggested that the Department consider providing more specific resources for ensuring meaningful stakeholder engagement. Another commenter suggested that the Department provide guidance clarifying that meaningful engagement means engagement in ways that are culturally and linguistically responsive.

Discussion: The Department appreciates the extensive support for the timely and meaningful consultation requirements in § 299.13(b). In order to ensure that States implement ESEA with fidelity, the Department strongly encourages States to consult and engage with stakeholders consistent with the best practices identified in the Stakeholder Engagement DCL, which is available at: *http://www2.ed.gov/policy/elsec/guid/secletter/160622.html.* In addition to ensuring the specific requirements in § 299.13(b) are met during the design and development of the SEA's plan, prior to initial submission of the plan, and prior to any revisions or amendments of the approved plans, the Department encourages States to consider applying the timely and meaningful consultation requirements throughout its implementation of the ESEA, as amended by the ESSA. Where relevant, we will consider issuing additional ESEA non-regulatory guidance regarding timely and meaningful consultation in the future, including guidance on culturally and linguistically responsive engagement.

Changes: None.

Comments: While commenters generally supported the requirements for timely and meaningful consultation in § 299.13(b), several recommended changes or additions to the proposed requirements. Some commenters asked that the regulations require not only consultation during preparation of the State plan, but also throughout implementation of the plan. Other commenters asked that language be added requiring States to describe their systems and structures for ensuring that meaningful and continuous stakeholder engagement occurs.

Additional commenters asked that the regulation be amended to require States to: (1) Provide 60 days public notice of the draft State plan; (2) provide written agendas prior to meetings and written responses to public comments; and (3) ensure high quality two-way communications between the State and stakeholders about the State plan. In particular, some commenters asked that two-way communication be required with teachers, and with parents and families. Another commenter suggested that the final regulations require that stakeholder engagement include meetings that educators can attend, which one commenter specifically provided should be through the provision of flexible leave to school employees for attendance at such meetings.

Discussion: The Department appreciates the comments suggesting additional requirements for timely and meaningful consultation but declines to add the requested requirements, which are, for the most part, already addressed in the regulations. We are requiring SEAs in the performance management requirements in § 299.15(b)(2)(i) to ''collect and use data and information, which may include input from stakeholders and data collected and reported under section 1111(h), to assess the quality of SEA and LEA implementation.'' In regards to requiring descriptions of systems and structures for consultation and requiring two-way communication about the plan, § 299.13(b) details a process that States must follow to satisfy the requirement for timely and meaningful consultation, including a requirement in § 299.13(b)(3) that the State ''[d]escribe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan.'' Therefore, we believe that States will provide valuable information on how the communication was a two-way dialogue. In addition, the provisions in § 299.15(b)(2)(i) encourage each SEA to continue to meaningfully engage with stakeholders to collect data on implementation of SEA and LEA plans. In regards to requiring two-way consultation specifically with teachers, and with parents and families, these two groups are among those already listed in § 299.15(a) with whom the State must ''. . . [engage] in timely and meaningful

consultations consistent with § 299.13(b).'' We encourage all States to specifically ensure that timely and meaningful consultation occurs during hours that parents, families, and current educators can participate and identified this as a best practice in the Stakeholder Engagement DCL.

In response to the comments requesting that we extend the public notice period from 30 days to 60 days, the Department encourages all States to provide as much time for public notice and outreach as possible. However, since section 1111(a)(8) of the ESEA, as amended by the ESSA, on which this requirement is based, only requires a State to make the State plan available for ''not less than 30 days,'' the Department declines to make this change. With regard to adding language requiring agendas and written follow up to comments, the Department encourages States to provide this sort of feedback to stakeholders, whenever possible, but finds making this a requirement would be unduly burdensome. Given the volume of comments received indicating that the consolidated State plan requirements, as drafted, are overly burdensome, the Department will not add the additional requirements to the consolidated State plan.

Changes: None.

Comments: Several commenters suggested that the regulations should require States to engage with Tribal governments above and beyond stakeholder engagement. Commenters recommended that the Department use Executive Order 13175 as a guide for ensuring that the regulations properly outline tribal consultation in the regulations. Commenters suggested that including a requirement in § 299.13(b) for SEAs to consult with tribes using agendas that are agreed upon in advance, and requiring SEAs to follow up in writing with stakeholders would help ensure that consultation is meaningful, and is respectful of the trust responsibility. Finally, one commenter urged the Department to condition State plan approval upon proof of meaningful consultation with Tribal nations.

Discussion: The commenter correctly notes that the Department has a government-to-government relationship with tribes, and that the consultation between the Department and tribes is outlined in Executive Order 13175. However, the Federal trust responsibility does not extend to SEAs. Therefore, the Department declines to add language to § 299.13(b) regarding additional requirements for tribal consultation. As noted previously, the Department encourages SEAs to provide agendas and written follow-up to stakeholders, whenever possible, but finds making this a requirement unduly burdensome.

In response to the commenter who asked that State plan approval be conditioned upon proof of meaningful consultation with Tribal nations, § 299.13(b)(3) requires States to describe how consultation and public comment were taken into account in the consolidated or individual State plan. We believe that this requirement addresses the commenter's concerns. Therefore, we decline to add additional language.

Changes: None.

Comments: Several commenters expressed satisfaction with the required processes for how States should engage in timely and meaningful consultation with stakeholders in formulating the State plan. Commenters asked that § 299.13(b) be amended to require LEAs to use the same timely and meaningful consultation processes in formulating LEA plans.

Discussion: The Department declines to add the requested requirement as it is outside of the scope of the regulations, which address only State plan requirements, not requirements for LEA plans. Additionally, if States choose to allow LEAs to submit consolidated LEA plans, section 8305(c) of the ESEA, as amended by the ESSA, makes clear that procedures for submission of the plans are not set by the Department noting, ''a State educational agency, in consultation with the Governor, shall collaborate with local educational agencies in the State in establishing procedures for the submission of the consolidated State plans or consolidated State applications under this section.'' If the State decides to use individual program applications rather than a consolidated local plan, individual applications for most covered programs already include consultation requirements. However, because we believe that timely and meaningful consultation is important and that ESEA implementation must be transparent, we encourage States to consider including the timely and meaningful consultation requirements at the local level.

Changes: None.

Comments: A few commenters commended the Department for including consultation with the Governor under section 8540 of the ESEA, as amended by the ESSA, in the requirements for timely and meaningful consultation in § 299.13(b). Two commenters requested that the Department require States to describe how they are meeting this requirement, including how the SEA engaged with the Governor by describing, among other things, the frequency of meetings and the extent of collaborative planning.

Discussion: Although the Department believes that SEA consultation with the Governor is important, the Department declines to require an additional description regarding how the SEA completed this consultation. Section 299.15 requires an SEA to describe how it engaged in timely and meaningful consultation consistent with § 299.13(b), including the Governor's consultation requirement in § 299.13(b)(4). An SEA must already describe in its consolidated State plan how it met the requirements of section 8540 of the ESEA, as amended by the ESSA. Therefore, we do not believe that requiring an additional description is necessary. Furthermore, in order to limit burden associated with submitting a consolidated State plan, the Department declines to add an additional requirement that an SEA, when describing how it consulted with the Governor, describe the frequency of meetings and the extent of collaborative planning.

Changes: None.

Foster Care Requirements

Comments: Many commenters expressed concern about the proposed assurance in § 299.13(c)(1)(ii) that required SEAs to ensure that LEAs receiving funds under title I, part A of the ESEA, as amended by the ESSA, would provide children in foster care with transportation to and from their schools of origin even if the LEA and local child welfare agency did not agree on which agency or agencies would pay the additional costs incurred to provide such transportation. Many commenters indicated that the assurance appeared inconsistent with section 1112(c)(5)(B) of the ESEA, as amended by the ESSA, and expressed concern that it would undermine the collaborative process anticipated by the ESEA. Other commenters expressed concern that the regulations would impose a significant financial burden on LEAs.

Many commenters praised the Department for including the protections for children in foster care in the State plan requirements, but many also proposed that the final regulations mirror the statutory requirements for collaboration. Other commenters suggested that the regulations require the procedures developed by the LEA and child welfare agency to include a dispute resolution process. Some commenters specified that it should be the child welfare agency that pays the additional costs of transportation, and

others asked that the regulations require the LEA and child welfare agency to automatically split the costs if the agencies cannot reach agreement. A number of commenters requested that the regulations require both the SEA and the State child welfare agencies to ensure that the LEAs and local child welfare agencies collaborate to develop and implement clear written transportation procedures. Some commenters also requested that the regulations be amended to clarify that the LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved. Other commenters expressed concern that requiring the LEA to provide transportation while disputes were being resolved would cause child welfare agencies to initiate a dispute process in order to avoid paying for transportation.

Discussion: The Department appreciates the concerns expressed by commenters that the proposed regulations may undermine that collaborative process by defaulting to the LEA as the responsible party for paying any additional transportation costs. Likewise, the Department believes that defaulting to the child welfare agency as the sole agency responsible for paying any additional costs associated with providing transportation would undermine the collaborative nature of the statute. As noted in the Department's non-regulatory guidance entitled Ensuring Educational Stability for Children in Foster Care, children in foster care are a particularly vulnerable subgroup of students. We believe these students have a right to educational stability, including transportation services as needed, to maintain them in their school of origin when in their best interest. Therefore, the Department believes that the final assurance in § 299.13(c)(1)(ii) should clarify the joint obligations for educational and child welfare agencies to ensure that transportation is provided to maintain educational stability.

The Department likewise recognizes that there may be circumstances where a dispute resolution process is required if an LEA and child welfare agency are unable to reach agreement as to which agency or agencies will pay any additional costs that may be associated with providing transportation to children in foster care to and from their schools of origin. However, the Department does not believe it is necessary to mandate a specific dispute resolution process as the statute clearly requires that LEAs collaborate with child welfare agencies to develop procedures that ensure that children in foster care needing transportation promptly receive such transportation.

In order to ensure this statutory requirement is met, the Department is clarifying that the SEA must assure that an LEA receiving funds under title I, part A has developed procedures that describe how such transportation will be provided and funded if the agencies cannot reach agreement, whether through a dispute resolution process or through default cost sharing. An SEA's assurance here means that the SEA must take a leading and active role to ensure that LEAs collaborate with State and local child welfare agencies to develop clear and written procedures regarding how children in foster care will receive transportation, as necessary, to their school of origin when determined to be in their best interest.

We appreciate commenters' concerns about children in foster care continuing to receive transportation to the schools of origin while disputes are pending, along with concerns about which agency or agencies should be responsible for providing this transportation, and are clarifying that the written procedures must also describe which agency or agencies will initially pay the additional costs incurred in providing transportation so that transportation is provided promptly during the pendency of the dispute. We believe that the appropriate agency or agencies responsible for initially paying the additional costs incurred may vary depending on the individual child's circumstances. The LEA and local child welfare agency should explore a variety of options that consider such circumstances. For example, for one child, the foster parent may be willing to transport the child to the child's school of origin; for another child, there may existing transportation readily available; and there may be instances that necessitate the child's transportation being funded.

Changes: We have revised § 299.13(c)(1)(ii) to remove the language requiring the LEA to provide transportation to children in foster care if the LEA and child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation. We have also added language to clarify that the written procedures developed by the LEA and State or local child welfare agency must address how the transportation requirements will be met in the event of a dispute over which agency or agencies will pay any additional costs incurred in providing transportation and indicate which agency or agencies will initially pay the additional costs so that transportation is provided promptly during the pendency of the dispute.

Comments: Several commenters wrote to express views on the best interest determination, school of origin, the timing of implementation of the new educational stability provisions, the foster care point of contact, the timing of the best interest determination, and other related issues concerning the educational stability of children in foster care.

Discussion: We agree that the educational stability of children in foster care is an important issue and appreciate the feedback on this issue. The proposed regulations, however, only addressed the topic of which agency or agencies should pay any additional costs associated with providing transportation to children in foster care to and from their schools of origin. Comments on related issues—such as the best interest determination, school of origin, and concerns about timing—are therefore outside the scope of the regulations. Furthermore, these topics are addressed in the Department's non-regulatory guidance entitled Ensuring Educational Stability for Children in Foster Care. For clarity on the statutory requirements in Sections 1111(g)(1)(E) and 1112(c)(5) of the ESEA, as amended by the ESSA, we refer commenters to this non-regulatory guidance document.

Changes: None.

Plan Submission Process

Comments: Several commenters remarked on the proposed plan submission dates of March 6, 2017, or July 5, 2017. Many of these commenters indicated that the proposed timeline for submission did not allow sufficient time for consultation; of particular concern was States' ability to adequately consult on a new accountability system prior to having the system ready to implement in the 2017–2018 school year. Some commenters expressed concern that the proposed submission dates would require that States begin to implement their accountability systems in school year 2017–2018 before their plans could be approved by the Secretary. Other commenters felt that the proposed submission deadlines were too late to ensure that SEAs had an approved plan in place in time to identify comprehensive and targeted support schools for the 2017–2018 school year and asked that the submission date be moved up to December 2016; two of these commenters also recommended that the Department's review timeline be shortened from 120 to 60 days to ensure that plan approval occurs prior

to the beginning of the 2017–2018 school year. Other commenters suggested that the Department allow SEAs to submit portions of the plan in a staggered fashion to allow additional time for consultation.

Discussion: Given that the Department has revised § 200.19(d) to permit States to delay full implementation of their accountability systems until the 2018–2019 school year and to allow SEAs additional time for timely and meaningful consultation, the Department has determined it is appropriate to adjust plan submission timelines and offer later submission dates. Accordingly, the Department will adjust the submission deadlines to April 3, 2017, or September 18, 2017.

The Department declines to move submission timelines up to December 2016 because doing so would not allow sufficient time for each SEA to engage in timely and meaningful consultation consistent with § 299.13(b). The Department also declines to reduce its time to review plans from 120 to 60 days; sections 1111(a)(4)(A)(v) and 8451 of the ESEA, as amended by the ESSA, allow 120 days for review and the Department believes that a 60-day review period allows inadequate time for the required peer review. While the Department appreciates the idea of allowing SEAs to submit their plans in parts, the Department believes that the entire consolidated State plan must be submitted at one time to ensure fully coordinated strategies.

Changes: None.

Comments: One commenter requested clarification on § 299.13(e) regarding the process for submitting revisions of consolidated State plans during the period for Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA. This commenter also requested that the Department streamline the process for review.

Discussion: The Department appreciates the opportunity to clarify the requirements in § 299.13(e). During the period of Secretarial review, an SEA may revise its initial plan in response to a preliminary written determination by the Secretary. When submitting revisions to the plan the SEA originally submitted, the SEA must resubmit the entire revised State plan, not just the parts that contain the additional revisions. The Department intends to provide additional information on the timing, format, and process for submitting and reviewing consolidated and individual program State plans in the near future.

Additionally, proposed § 299.13(b)(2)(iii) required timely and meaningful consultation prior to the submission of any significant revisions or amendments to the consolidated State plan. In order to distinguish the requirements for revising an initial State plan from the timely and meaningful consultation requirements for an approved State plan, the Department is clarifying the language in § 299.13(b)(2)(iii) to apply to an approved consolidated State plan or individual program State plan rather than an initial consolidated State plan.

Changes: The Department has revised § 299.13(e) to indicate that an SEA, when resubmitting its initial consolidated State plan, must resubmit the entire State plan, which includes its revisions. We have also clarified that the timely and meaningful consultation requirements in § 299.13(b)(2)(iii) apply to an approved consolidated State plan or individual program State plan and not to the process for revising initial consolidated State plans under § 299.13(e).

Comments: None.

Discussion: Under § 299.13(d)(i), the Department described the process for submitting an initial consolidated State plan or individual program State plan. In the proposed regulation § 299.13(d), we indicated that an SEA must submit the plan to the Department on a date and time to be established by the Secretary. The Department is clarifying that the Secretary will, at a future date, also establish the manner (*e.g.,* electronic or paper) by which an SEA must submit its State plan. Under proposed § 299.13(d)(ii), the Department detailed when a consolidated State plan or individual program State plan was considered to be submitted by the Secretary if it was received prior to an established deadline. We are clarifying that any State plan received prior to the deadline established by the Secretary is considered to be submitted on the date of the established deadline (rather than the date received) for the purposes of the 120 day period of Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Changes: The Department has revised § 299.13(d)(i) to indicate that an SEA must submit its consolidated State plan or individual program State plan in the manner (*e.g.,* paper or electronic) to be established by the Secretary. The Department has also revised § 299.13(d)(ii) to indicate that the provision regarding State plans received prior to an established deadline is for the purposes of tolling the period of Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Extension for Reporting Student-Level Data

Comments: As discussed later in this document under § 299.18(c), a few commenters noted that the requirement to provide educator equity data at the student level is burdensome. Commenters expressed concern as to whether the Department could prescribe any date at which the reporting of student-level data is required.

Discussion: While a few commenters suggested removing the student-level data requirement altogether, as discussed later in this document under § 299.18(c), we believe the requirement to provide educator equity data at the student level is critical. However, we understand that some States may not currently have the capacity to collect or report data at the student level. In light of the fact that the requirement may be burdensome for certain States and districts that have not yet begun collecting or using student-level data, the Department is adding an additional year to the extension that an SEA may request, detailed in § 299.13(d)(3). An SEA requesting a three-year extension for providing educator equity data at the student level must, during the three-year extension, publish and provide those data in its State plan at the school level, consistent with § 299.13(d)(3)(ii).

Changes: We have revised § 299.13(d)(3) to allow an SEA to request an extension for three years if it provides the information and data required under § 299.18(c) at the school level and submits a detailed plan and timeline to provide those data at the student level within three years of the date of submission of its title I, part A State plan or consolidated State plan.

Section 299.14 Requirements for the Consolidated State Plan

Content of the Consolidated State Plan—Burden and Authority

Comments: While a small number of commenters appreciated the integrated and comprehensive nature of the proposed consolidated State plan requirements, several commenters objected to the volume of proposed consolidated State plan requirements. The commenters asserted that the Department has the statutory authority, under section 8302 of the ESEA, as amended by the ESSA, to require an SEA to provide ''only descriptions, information, assurances . . . and other materials that are absolutely necessary for the consideration of the consolidated State plan.'' Some commenters stated that the requirements would result in cumbersome and complicated plans that stakeholders would find difficult to

review and understand. Other commenters asserted that the requirements promoted certain education policies not explicitly required in the statute and would allow the Department to implement a peer review process that further promoted those policies. Some commenters recommended that the Department condense and streamline the consolidated State plan requirements, but did not make specific recommendations for requirements to remove. Others recommended that the Department reduce specific consolidated State plan requirements including the performance management requirements in proposed § 299.14, assessment requirements in proposed § 299.16, teacher quality and equity requirements in proposed § 299.18, and the well-rounded and supportive education for all students requirements in proposed § 299.19.

Discussion: Section 8302(a)(1) of the ESEA, as amended by the ESSA, indicates that the Secretary ''shall establish procedures and criteria under which, after consultation with the Governor, [an SEA] may submit a consolidated State plan or a consolidated State application meeting the requirements of this section.'' Additionally, section 410 of GEPA, 20 U.S.C. 1221e–3, authorizes the Secretary, ''in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, . . . to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.'' Moreover, section 414 of the DEOA similarly authorizes the Secretary to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. The requirements for a consolidated State plan in §§ 299.14–299.19 are being issued in accordance with the authority granted to the Secretary by GEPA, DEOA, and section 8302 of the ESEA, as amended by the ESSA. With respect to the commenters' concerns that the Secretary does not have the authority to include some of the required descriptions or information because it is not ''absolutely necessary for consideration of the consolidated State plan,'' all of the descriptions, information and assurances included in §§ 299.14–299.19 have been determined by the Secretary to be absolutely necessary and consistent with the authority in section 8302 of the ESEA, as amended by the ESSA. The consolidated State plans must provide sufficient detail across the included programs in order to ensure transparency for all stakeholders, proper administration of Federal funds and allow the Secretary to consider whether such plan is consistent with the ESEA, as amended by the ESSA, and applicable regulations. Additionally, consistent with the purpose of the consolidated State plan, we believe that the regulations would significantly reduce burden on each SEA choosing to submit a consolidated State plan rather than individual program State plans. Furthermore, the Secretary believes that all requirements of the consolidated State plan have a statutory basis in the covered program provisions throughout the ESEA, as amended by the ESSA, and other applicable regulations.

In response to the concern that the Department may be promoting specific education policies through the peer review process for the consolidated State plan, the Department is required under section 8452 of the ESEA, as amended by the ESSA, to ensure that any portion of a consolidated State plan that is related to title I, part A is subject to the peer review process described in section 1111(a)(4) of the ESEA, as amended by the ESSA. The Department intends to administer a peer review of consolidated State plans consistent with the purpose of the peer review under section 1111(a)(4)(B) to ''maximize collaboration with each State; promote effective implementation of challenging State standards through State and local innovation; and provide transparent, timely, and objective feedback to States designed to strengthen the technical and overall quality of the State plans.''

However, given the concerns expressed by several commenters and the Department's desire to eliminate unnecessary burden from State plans, we believe that some of the requirements within and across the consolidated State plan regulations can be further consolidated. Therefore, in an effort to reduce additional burden on States, we are changing some previously required descriptions into either an optional description or an assurance, and removing some previously required descriptions entirely from the consolidated State plan. Additionally, in an effort to streamline the requirements, we are reorganizing the structure of the consolidated State plan to place all cross cutting requirements in § 299.15, including required descriptions on consultation and performance management. For performance management, each SEA would only have to discuss these cross-cutting requirements once rather than under each component as proposed in § 299.14(c). Furthermore, we also believe that some of the requirements were not clear and therefore were interpreted to be more burdensome than intended. As a result, we are clarifying some consolidated State plan requirements to address those instances where a lack of clarity in the regulatory language resulted in an increase in perceived burden. The discussion of the exact changes to reduce burden in §§ 299.16–299.19 of the consolidated State plan are discussed below in the specific section where the changes were made.

Changes: We have moved the requirement in proposed § 299.14(c) regarding performance management to § 299.15(b) and revised it so that an SEA describes its system of performance management for implementation of SEA and LEA plans once rather than separately for each of the components required under §§ 299.16 through 299.19. With the exception of § 299.18(c), we have streamlined the required descriptions throughout §§ 299.15 through 299.19 by removing the requirement to identify specific strategies and timelines in each required description. We have also revised proposed § 299.14(c)(1) and (2)(i) to make certain descriptive details optional rather than required regarding how the SEA's plan approval process is aligned to the strategies identified in the consolidated State plan and whether to consider specific data collected and reported under section 1111(h) of the ESEA, as amended by the ESSA, and specific input from stakeholders when assessing the quality of SEA and LEA implementation. The changes are reflected in final § 299.15(b)(1) and (2). As a result of those changes, we have removed the requirement in proposed § 299.19(a)(3)(A)–(D) regarding a review of data and information on resource equity, and revised final § 299.15(b)(2) to indicate that each SEA may consider such information broadly as part of review and approval of LEA plans under the revised requirements for an SEA's system of performance management. We have also removed the requirement in proposed § 299.15(b) for each State to describe how it will coordinate across Federal laws impacting education and included this requirement as an assurance in the new section on consolidated State plan assurances in final § 299.14(c). We have further removed some previously required descriptions and streamlined other requirements in §§ 299.16 through 299.19 including by changing

previously required descriptions into assurances and only requiring certain descriptions if a State intends to use Federal funds for that purpose.

Comments: Some commenters suggested that additional State plan requirements be added to proposed § 299.14. Specifically, one commenter asked that proposed § 299.14(c) be augmented to include a requirement that SEAs ensure data transparency by describing their plans for preparing and disseminating State report cards, and for ensuring that LEAs prepare and disseminate local report cards. Other commenters asked that proposed § 299.14(c) be amended to require that SEAs provide additional information about their strategies and timelines for ensuring continuous improvement so that States continuously improve all strategies, not just strategies that do not lead to satisfactory progress.

Discussion: The Department agrees with the commenters that data transparency and promotion of continuous improvement are important goals. To that end, we have already included in final § 299.15(b) requirements that consolidated State plans address continuous improvement strategies and the use of data in the consolidated State plan. We have also established in §§ 200.30 and 200.31 requirements to ensure that State and local report cards contain all elements required by the statute, including that these report cards be presented in an understandable and uniform format. However, given the comments received indicating that the consolidated State plan requirements, as drafted, are overly burdensome, the Department will not add additional requirements to the consolidated State plan. The Department believes that existing statutory and regulatory requirements for report cards are sufficient to ensure data transparency. We agree with the comment on proposed § 299.14(c) that SEAs should review all strategies for continuous improvement and not only those strategies that are not improving outcomes and are revising final § 299.15(b)(2)(iii) to ensure that SEAs review all SEA and LEA plans and implementation of those plans for continuous improvement.

Changes: We have revised § 299.15(b)(2)(iii) to require that an SEA describe its plan to continuously improve implementation of all SEA and LEA plans.

Integrated Nature of the State Plan

Comments: Several commenters supported the Department's proposal that SEAs develop consolidated State plans that address: Consultation and coordination; challenging academic standards and assessments; accountability, support, and improvement for schools; supporting excellent educators; and supporting all students in a truly consolidated manner across all covered programs. One commenter expressed concern that the State plan structure is insufficiently integrated and will reinforce traditional silos in the education system; this commenter recommended that the regulations require SEAs to articulate a vision or theory of action that ties the five components of the consolidated State plan together.

Discussion: We appreciate commenters' support for the proposed regulations. With regard to a requirement that SEAs articulate an overall vision or theory of action, while we encourage SEAs to do this, we believe that requirement would unnecessarily increase burden on States.

Changes: None.

Section 299.15 Consultation and Coordination

Stakeholder Engagement

Comments: Many commenters recommended that the Department strengthen the requirements related to SEAs' consultation with stakeholders during the design and development of the consolidated State plan. Specifically, commenters requested that the Department ensure that the voices of stakeholders are heard. Another commenter suggested that the Department ensure that teachers are in control of the education system. Additionally, one commenter suggested that the process for revising the consolidated State plan should be vetted by a wide range of stakeholders. An additional commenter suggested that the Department define the term ''to be developed in partnership with stakeholders'' to mean that the process must be proactive and inclusive, and that partners must have all of the same information and the assistance needed to fully understand it, the time to develop responses, and the vehicles for responding.

In contrast, two commenters suggested that the consultation requirements be removed from the consolidated State plan regulations to permit States additional flexibility to establish State plan procedures and timelines.

Discussion: The Department appreciates the comments on ways to strengthen engagement, as well as the comments on the importance of State flexibility in regard to these requirements. Just as we believe that meaningful stakeholder engagement is critical to the consolidated State plan development and implementation process, we also believe that discrete decisions about the specific process for engagement are best made at the local level.

We appreciate the best practices in consultation and stakeholder engagement highlighted by many of the commenters, including information sharing and providing vehicles for responding, as well as the proposed definition that one commenter provided for the phrase ''to be developed in partnership with stakeholders.'' We encourage the use of these best practices throughout the consultation process. We further appreciate that many commenters emphasized that their voice should be honored and not undermined, and we believe the final regulations will help ensure that a wide range of stakeholders will be consulted throughout the process of consolidated State plan development and implementation. See § 299.13 for a discussion of additional comments related to timely and meaningful consultation.

Changes: None.

Comments: Multiple commenters recommended that the Department require each SEA to consult with additional stakeholder groups in developing its consolidated State plan, including: Representatives of private school students, representatives of non-government school students and teachers, and non-government school students and teachers; early childhood educators and leaders; parent and teacher advisory groups and parents; representatives of teachers' unions; practicing and current K–12 teachers; organization members who specifically represent students with disabilities; civil rights organizations, including those who represent lesbian, gay, bisexual, and transgender (LGBT) students; tribal elected or appointed representatives; specialized instructional support personnel; school psychologists; community representatives; Alaska Native corporations; school librarians; local government; individuals knowledgeable about how to meet the needs of specific subgroups of students; entities that serve and support some of the most vulnerable students, including students involved in child welfare, homeless students, juvenile justice-involved youth, and workforce development staff, providers, and advocates; employers; and families of traditionally underserved students, including low-income children, minority children; and English learners. Commenters

recommended that we require SEAs to consult with these specific groups because of their unique voices, as well as the specialized needs of the populations that these groups represent. Specifically with respect to tribal elected or appointed representatives, the commenter noted while the inclusion of ''representatives of Indian tribes located in the State'' is important, representatives should not be named as surrogates for tribal government representation.

Discussion: The final regulations include a broad group of required stakeholders with whom each SEA must consult when developing its consolidated State plan. This group includes each of the groups prescribed by the statute, as well as additional stakeholder groups that have the potential to bring important and varied perspectives to a State's work to develop and implement a consolidated State plan. Additionally, the required group of stakeholders in the regulations includes a number of the stakeholder groups specifically requested by commenters, including: Civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students; teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals; community-based organizations; employers; and parents and families. For these reasons, we generally decline to add additional required stakeholder groups, as requested by commenters.

However, we note that commenters highlighted two critical stakeholder groups that were not included in § 299.15(a) of the proposed regulations and have unique perspectives to provide to a State in its development of its consolidated State plan: Representatives of private school students, and early childhood educators and leaders. We find particularly compelling commenters' arguments that consolidated State plans may not sufficiently reflect the interests of these two stakeholder groups–representatives of private school students, and early childhood educators and leaders–without the explicit inclusion of these groups in the required list of stakeholders with whom a State must consult in developing and implementing its consolidated State plan. Therefore, we are expanding the list of required stakeholder groups to explicitly include these two stakeholder groups. Additionally, in order to address the concerns of commenters who did not see their particular constituency represented in the required list of stakeholders with whom a State must consult on its consolidated State plan, we are clarifying in the final regulations that the required group of stakeholders with whom a State must consult is a mandatory, but non-exhaustive list, and may be supplemented by States as appropriate, based on local context and need.

Changes: We have revised § 299.15(a) to add the following to the required list of stakeholders with whom a State must consult on its consolidated State plan: Representatives of private school students, and early childhood educators and leaders. We have clarified in § 299.15(a) that the required stakeholder groups represent minimum requirements and may be supplemented at each SEA's discretion.

Coordination

Comments: A few commenters expressed support regarding the requirements for the Department's efforts to increase coordination across related program plans. One commenter also suggested we add the WIOA and career and technical educational programs to the list of required programs for plan coordination.

Discussion: We appreciate the commenters' support for ensuring that SEAs coordinate the work they are conducting under their consolidated State plan with other programs in the State. The proposed regulations in § 299.15(b), as well as the final regulations in § 299.14(c), include required coordination between the consolidated State plan and an extensive group of plans from additional programs, including under the WIOA and the Carl D. Perkins Career and Technical Education Act of 2006.

Changes: None.

Section 299.16 Challenging Academic Standards and Academic Assessments

Challenging Academic Standards and Academic Assessments in General

Comments: Many commenters expressed concern regarding proposed § 299.16(a)(1) that requires an SEA to provide evidence at such time and in such manner specified by the Secretary that the State has adopted challenging academic content standards. Some commenters indicated that the Department should only require an SEA to provide an assurance that the State adopted challenging academic content standards consistent with 1111(b)(1) of the ESEA, as amended by the ESSA.

Discussion: As some commenters noted, section 1111(b)(1)(A) of the ESEA, as amended by the ESSA, requires each State, in its title I, part A State plan, to provide an assurance that the State has adopted challenging academic content standards and aligned academic achievement standards that will be used to carry out title I, part A. At the same time, section 1111(b)(1)(D) of the ESEA requires a State to ''demonstrate'' that those challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards. Similarly, section 1111(b)(1)(E) of the ESEA, as amended by the ESSA, permits a State to adopt alternate academic achievement standards but only if those standards meet specific statutory requirements and section 1111(b)(1)(F) of the ESEA requires a State to ''demonstrate'' that the State has adopted ELP standards that meet certain statutory requirements. Moreover, section 1111(b)(2) of the ESEA requires a State to ''demonstrate'' that it has implemented a set of high-quality academic assessments in at least mathematics, reading/language arts, and science. The Department is committed to ensuring that all States meet the statutory requirements in sections 1111(b)(1) and (b)(2) of the ESEA, as amended by the ESSA, including through peer review consistent with section 1111(a)(4).

In order to avoid any confusion that proposed § 299.16(a)(1) may have raised, the Department is removing the provisions in § 299.16 related to section 1111(b)(1) and replacing them with a general assurance of compliance with relevant statutory and regulatory provisions regarding standards and assessments in final § 299.14(c)(2). Because the statutory language is clear, we do not believe that further regulatory efforts in the consolidated State plan are necessary other than a general assurance that a State will comply with the standards and assessment requirements in sections 1111(b)(1)(A)–(F) and 1111(b)(2) of the ESEA, as amended by the ESSA, and applicable regulations.

Changes: We have removed the requirements in proposed § 299.16(a), (b)(1)–(2), (4)–(5), and (6) and replaced them with an assurance in § 299.14(c)(2) that the State will meet the standards and assessments requirements of sections 1111(b)(1)(A)–(F) and 1111(b)(2) of the ESEA, as amended by the ESSA, and applicable regulations.

Comments: Some commenters praised the coherence of the State plan regulations, including § 299.16, while other commenters suggested that the requirements were burdensome and

recommended removing § 299.16 entirely. A number of commenters urged the Department to expand local control over standards and assessments, or generally to reduce the requirements to use standardized tests. A few commenters suggested that testing should happen less frequently, such as once in each of several grade spans, instead of annually.

Discussion: The Department appreciates the diversity of opinions with regard to the structure of § 299.16. Section 1111(b)(1)(B) of the ESEA, as amended by the ESSA, requires each State to establish the challenging academic content and academic achievement standards that apply to all public schools and public school students in the State, except in certain narrow circumstances also described in statute. Section 1111(b)(2) of the ESEA, as amended by the ESSA, enumerates State responsibilities for statewide academic assessments using the same assessments, except in certain cases. The statute clearly requires continued use of statewide academic assessments annually in grades three through eight and once in high school, regardless of the specific reference to such responsibilities in this regulation. However, in an effort to streamline the requirements in this section and reduce burden for States, the Department is no longer asking each State to describe in its consolidated State plan each of the requirements previously proposed in § 299.16 that will be reviewed as part of the peer review process. States remain responsible for implementing challenging academic standards and assessments consistent with the statute and applicable regulations. Additionally, in an effort to reduce the overall burden associated with submitting the consolidated State plan, we are removing the required description of how the State will use formula grant funds under section 1201 of the ESEA, as amended by the ESSA, and removing this program from the programs included in the consolidated State plan under § 299.13(j)(2).

Changes: As previously described, we have removed the proposed requirements in proposed § 299.16(a) and replaced them with an assurance in final § 299.14(c)(2) that the State will meet the standards and assessments requirements of sections 1111(b)(1)(A)–(F) of the ESEA, as amended by the ESSA. Additionally, we have removed the proposed requirements in § 299.16(b)(1)–(2) and (4)–(5) and replaced them with an assurance of compliance with section 1111(b)(2) of the ESEA, as amended by the ESSA, and applicable regulations. Finally, we removed the proposed requirement in § 299.16(b)(7) to describe how a State will use formula grant funds awarded under section 1201 of the ESEA, as amended by the ESSA, and have removed this program from the programs included in the consolidated State plan under § 299.13(j)(2).

Comments: A number of commenters proposed specific changes regarding the substance of the assessments as required under section 1111(b)(2) of the ESEA, as amended by the ESSA, including by reflecting on challenges experienced by military students who must adjust to various State policies and tests; underscoring that alternate assessments be aligned with grade-level academic content standards for the grade in which the student is enrolled; proposing that alternate assessments for students impacted by trauma be created to measure success in schools that serve large populations of such students; requesting that States be allowed to assess some students with significant cognitive disabilities who do not meet the criteria for students with the most significant cognitive disabilities using assessments based on academic standards for a grade other than the student's enrolled grade; proposing that States coordinate with the Head Start community regarding academic standards; requesting an assessment pause during the transition to the ESEA, as amended by the ESSA; suggesting that additional focus be applied to the needs of students with disabilities and English learners with respect to test accommodations; asking that ELP not impede English learners from passing standardized tests required for graduation; emphasizing that ELP tests should be subject to assessment peer review; requesting that students receiving instruction primarily in a Native American language be explicitly allowed to take assessments in that language; urging that social studies assessments be required; recommending that protections generally be made clearer for English learners who receive instruction primarily in a Native American language school or program; and suggesting that English learners be exempt from taking academic content assessments if those students are taking ELP assessments.

Discussion: The proposed consolidated State plan requirements in §§ 299.14 and 299.16 address the information and assurances that a State must submit to the Department in order to receive Federal funds, including information and assurances regarding a State's compliance with section 1111(b)(2) of the ESEA, as amended by the ESSA. In March and April 2016, the Department engaged in negotiated rulemaking regarding the substance of the assessment requirements, including how a State complies with section 1111(b)(2) of the ESEA, as amended by the ESSA. As a result, any comment received in response to this NPRM regarding assessment requirements that were subject to negotiated rulemaking are considered outside the scope of these regulations. The Department will consider any comments on the assessment regulations received in response to this NPRM when responding to comments received on the notice of proposed rulemaking for title I, improving academic achievement of the disadvantaged, Academic Assessments published in the **Federal Register** on July 11, 2016 (81 FR 44927) (Assessments NPRM).

Changes: None.

Mathematics Exception for Students in Advanced Courses in Eighth Grade in States That Use End-of-Course Mathematics Assessments in High School

Comments: A few commenters objected to proposed § 299.16(b)(3), which would require an SEA to describe its strategies in the consolidated State plan to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school consistent with section 1111(b)(2)(C) of the ESEA, as amended by the ESSA, and applicable regulations. The commenters noted that the final consensus-based language from negotiated rulemaking, on which this proposed requirement was based, would only require an SEA to describe its strategies if the State administers end-of-course mathematics assessments to high school students to meet the requirements under section 1111(b)(2)(B)(v)(I)(bb) of the ESEA, as amended by the ESSA, and uses the exception for students in eighth grade to take such assessments under section 1111(b)(2)(C). As written, however, commenters noted that the requirement would apply to all States.

Discussion: The Department agrees with the commenters. The final consensus-based language from negotiated rulemaking and the proposed regulations in the Assessments NPRM would only require an SEA to describe its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school if the State administers end-of-course mathematics assessments to high school students to meet the requirements under section 1111(b)(2)(B)(v)(I)(bb) of the ESEA, as amended by the ESSA, and uses the

exception for students in eighth grade to take such assessments under section 1111(b)(2)(C) of the ESEA, as amended by the ESSA.

Changes: We have revised § 299.16(a) to indicate that an SEA would only be required to describe its strategies in the consolidated State plan to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school if the State administers end-of-course mathematics assessments to high school students to meet the requirements under section 1111(b)(2)(B)(v)(I)(bb) of the ESEA, as amended by the ESSA, and uses the exception for students in eighth grade to take such assessments under section 1111(b)(2)(C) of the ESEA, as amended by the ESSA.

Section 299.17 Accountability, Support, and Improvement for Schools

§ 299.17(b)(8) Including All Public Schools in the State Accountability System

Comments: A few commenters sought clarification regarding whether a State may use a different methodology for accountability for schools serving special populations than the methodology used for all public schools. One commenter noted that the list of schools for which a State may describe a different methodology from the methodology used for all public schools only appeared in the consolidated State plan requirements and did not appear in the accountability regulations. Specifically, commenters recommended that a State be able to use a different methodology for certain accountability indicators for alternative schools, schools in the juvenile justice system, schools serving reengaged children and youth, credit-recovery schools, and schools serving over-age students. Some commenters stated that one such modification to the methodology would be to identify schools and require interventions based not on a low four-year graduation rate but that a State should be able to identify and require interventions in these types of schools based on an extended-year graduation rate.

Discussion: The Department agrees that it was unclear to include a list of schools for which a State may use a different methodology for accountability in the consolidated State plan requirements but not in the accountability regulations. Placing this list in the consolidated State plan section gave the incorrect impression that a State might not be able to use a different methodology to identify schools for support and improvement that serve special populations of students if it completed an individual title I, part A State plan. We intended to permit a State to use a different methodology for specific types of schools, regardless of whether it submits a consolidated State plan or an individual title I, part A State plan. See the previous discussion regarding Other Requirements in Annual Meaningful Differentiation of Schools in this preamble for a discussion of changes to the types of schools included in the list.

Changes: We have revised § 299.17 by removing from the consolidated State plan requirements the list of schools for which an SEA may describe an accountability methodology that is different from its statewide methodology. We have included the list of schools in the final regulation at § 200.18(d)(1)(iii) within the context of a State's system of annual meaningful differentiation.

§ 299.17(d) and (e)—Burden Reduction

Comments: A number of commenters generally objected to the volume of proposed consolidated State plan requirements, including those requirements in proposed § 299.17(d) and (e). Some commenters contest whether such requirements were absolutely necessary for the consideration of the consolidated State plan.

Discussion: The Department agrees that some of the requirements within and across the consolidated State plan regulations can be further streamlined. In an effort to reduce burden across all of the consolidated State plan requirements, we reconsidered which of the proposed descriptions were absolutely necessary for ensuring each State is in compliance with the statute and applicable regulations. Given that accountability systems under the ESEA, as amended by the ESSA, will be significantly different from accountability systems under the ESEA, as amended by NCLB, we are preserving many of the consolidated State plan requirements regarding each State's new accountability system under the ESEA, as amended by the ESSA. In examining the proposed requirements related to State support and improvement and performance management and technical assistance for low-performing schools, we are streamlining the required descriptions and converting one proposed description into a required assurance. Under proposed § 299.17(e)(3), an SEA was asked to describe additional improvement actions the State may take in an LEA with a significant number of identified schools. This description is similar to the description required under proposed § 299.17(e)(2) regarding technical assistance to LEAs with a significant number of identified schools. This description may have also overlapped with an SEA response to proposed § 299.17(d)(5) in which a State would identify other strategies to improve low-performing schools. An SEA could include a description of additional improvement actions or other strategies to improve low-performing schools in its description of technical assistance. Therefore, we are consolidating the descriptions related to these provisions into a single required description. We believe that the response an SEA might have provided in the proposed descriptions at §§ 299.17(e)(2) and (d)(5) may be captured in the remaining required descriptions. In addition, to further reduce burden in this component of the consolidated State plan, we converted the proposed description in § 299.17(e)(1) to an assurance in the new consolidated State plan assurance section in § 299.14. Final § 299.14(c)(3) requires each SEA to assure that it will approve, monitor, and periodically review LEA comprehensive support and improvement plans consistent with requirements in section 1111(d)(1)(B)(v) and (vi) of the ESEA and § 200.21(e). The Department believes this assurance is absolutely necessary for the consideration of consolidated State plans to ensure compliance with statutory requirements under section 1111(d)(1) of the ESEA, as amended by the ESSA.

Changes: We have revised § 299.17 by deleting proposed (d)(5) and (e)(2).

Cross-Cutting Changes

Comments: A few commenters recommended we strike or amend specific consolidated State plan requirements because they objected to the requirements, or they had suggested changes to the accountability requirements, which would necessitate conforming changes to the State plan requirements. Commenters recommended that we strike or amend consolidated State plan requirements related to, for example, summative ratings, comprehensive support and improvement plans, and the needs assessment.

Discussion: Each State plan requirement on accountability directly relates to the accountability requirements as described in the ESEA, as amended by the ESSA, and in the regulations. In response to comments, we have made a change or declined to make changes to the accountability, support, and improvement requirements

as described in the sections of this preamble under §§ 200.12 through 200.24. When an accountability requirement changed, we made a corresponding change to the consolidated State plan requirement, as described in § 299.17. For a discussion of comments related to the summative rating, see discussion under the section titled *Summative Ratings;* for a discussion of comments related to targeted support and improvement plans, see the discussion under the section titled *Comprehensive and Targeted Support and Improvement Plans: In General;* and for a discussion of comments related to needs assessments, see the discussion under the section titled *Needs Assessment: Comprehensive Support and Improvement.*

Changes: We have revised the consolidated State plan requirements related to accountability, support, and improvement for schools in §§ 299.17(b)(3)(ii), (b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(iv), (b)(7), (b)(8), (c)(3), (c)(4), (c)(5), (d)(2), (d)(4), and (d)(5) to conform with changes made in these final regulations.

Comments: None.

Discussion: In the course of reviewing the proposed regulations, the Department identified opportunities to clarify the regulations and strengthen the connections between the accountability regulations and the consolidated State plan requirements related to accountability. Therefore, we are clarifying multiple requirements in the accountability section of the consolidated State plan. There are two types of clarifications: (1) Adding or modifying a citation to align to the corresponding accountability requirement; and (2) modifying language to align with the accountability requirement and specify what would be requested in a consolidated State plan.

Changes: We have revised § 299.17(b)(1), (b)(3)(i),(b)(3)(ii), (d)(1), (d)(2), (d)(4) to ensure the consolidated State plan requirements align with the requirements in the final accountability regulations.

Section 299.18 Supporting Excellent Educators

§ 299.18(a) Systems of Educator Development, Retention, and Advancement

Comments: Multiple commenters expressed support for § 299.18(a) regarding a comprehensive approach to systems of educator development, retention, and advancement. Commenters also recommended a variety of changes, including the addition of teachers of students with disabilities and early childhood educators to § 299.18(a)(2), an emphasis on evidence-based strategies'' where appropriate, and replacing the word ''adequate'' in § 299.18(a)(2) with the term ''high-quality.'' Another commenter advised the Department to clarify that each SEA should describe the efforts it is making in regard to each of the requirements in § 299.18(a), in addition to describing how it is ensuring that each LEA implements a comprehensive system of professional growth and improvement for educators that encompasses these efforts. Finally, one commenter asserted that the inclusion of State plan requirements related to systems of professional growth and improvement is not consistent with the statute and exceeds the Department's statutory authority.

Discussion: The Department appreciates commenters' general support for the requirements in proposed § 299.18(a), as well as their recommendations for strengthening the final regulations. However, because State systems and strategies for educator development, retention, and advancement may vary substantially, the Department declines to expand the requirements in this area. In addition, we anticipate that in response to State and local needs and circumstances many SEAs will, for example, address additional categories of educators or include evidence-based strategies in their plans. We also note that on September 27, 2016, the Department recently published non-regulatory guidance for title II, part A: Building Systems of Support for Excellent Teaching and Leading available at: *http://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf* (Title II, Part A Guidance). Furthermore, the Department will consider additional guidance and technical assistance regarding how SEAs can help ensure that their systems of educator development, retention, and advancement are supporting all educators.

We agree with the commenter's concern that the term ''adequate preparation'' was insufficiently rigorous, and are revising § 299.18(a)(2) to better reflect our expectations for educator preparation programs, including by clarifying that the description should describe State strategies to improve teacher preparation programs rather than a system of preparation.

As noted in the regulatory language itself, we believe that proposed § 299.18(a) is consistent with sections 2101 and 2102 of the ESEA, as amended by the ESSA, and is not outside of the Department's statutory authority in section 8302 of the ESEA, as amended by the ESSA, to establish the process and criteria for submitting a consolidated State plan. Additionally, given that the Secretary has general rulemaking authority under GEPA and DEOA, it is not necessary for the ESEA, as amended by the ESSA, to specifically authorize the Secretary to issue a particular regulatory provision. However, we agree that it is important for the final regulations to be clear about where uses of funds were permissive, rather than mandatory. For this reason and in response to the comments regarding the overall burden associated with submitting a consolidated State plan, we are revising the language in § 299.18(a) to provide that the required descriptions are applicable only to SEAs who intend to use funds under one or more of the covered programs for the activities in § 299.18(a)(1)–(3). Additionally, we are revising § 299.18(a)(3) to further clarify that an SEA is permitted, but not required, to include a description of how it will work with LEAs in the State to develop or implement State or local teacher, principal, or other school leader evaluation and support systems.

Changes: We have revised § 299.18(a) to clarify that it applies to each SEA that intends to use funds under one or more of the included programs for the activities in § 299.18(a)(1)–(3). We have revised § 299.18(a)(2) to reflect that we expect State plans to include strategies to improve educator preparation programs. Finally, we have revised § 299.18(a)(3) to clarify that an SEA's plan may, but is not required to, include a description of how it will work with LEAs in the State to develop or implement State or local teacher, principal, or other school leader evaluation and support systems.

Comments: Multiple commenters recommended adding requirements related to teacher certification and preparation, including how SEAs will ensure that all teachers and paraprofessionals working in title I programs meet applicable State certification and licensure requirements, incorporating teacher certification into the educator equity requirements in § 299.18(c), clarifying the definition of certification, requiring specific coursework in teacher preparation programs, reporting on teacher preparation programs, and publicly reporting the demographics of certified teachers.

Discussion: We appreciate commenters' interest in clarifying and

strengthening requirements related to teacher certification and preparation in the final regulations. However, the ESEA, as amended by the ESSA, recognizes State discretion in determining requirements and definitions related to teacher preparation and certification, and we decline to limit that discretion in these final regulations.

We also note that requirements related to teacher preparation programs generally are governed by the Higher Education Act of 1965, as amended (HEA), rather than the ESEA. The Department recently finalized regulations regarding teacher preparation under, available at: *http://www.ed.gov/news/press-releases/education-department-releases-final-teacher-preparation-regulations*.

Changes: None.

Comments: A number of commenters recommended clarifying in § 299.18 that professional development in the consolidated State plan should be consistent with the definition provided in section 8101(42) of the ESEA, as amended by the ESSA. Commenters also urged the Department to add guardrails around the rigor or professional development provided by LEAs, to link teacher and leader development to school improvement strategies in State plans, and to promote measuring the quality of professional development as part of statewide accountability systems. Other commenters encouraged the Department to promote a wide range of particular professional development activities in the final regulations; including, for example, an emphasis on bilingual instruction, involving the Committee of Practitioners in setting priorities for professional development, and training on the use of strategies to create safe, healthy, and affirming school environments.

Discussion: We agree that the final regulations would be strengthened by incorporating the definition of professional development in section 8101(42) of the ESEA, as amended by the ESSA, and are revising § 299.18(a)(3) accordingly. However, because we believe that specific decisions regarding the design and implementation of professional development and learning opportunities are best made at the State and local level, we decline to highlight particular types of professional development or related activities in the final regulations. We further note that the Department issued non-regulatory Title II, Part A Guidance on the use of title II, part A funds that addresses some of the concerns expressed by commenters.

Changes: We have revised § 299.18(a)(3) to incorporate the definition of ''professional development'' in section 8101(42) of the ESEA, as amended by the ESSA.

Comment: One commenter recommended adding a requirement for an SEA to describe how it will use title II, part A funds and English learner set-aside funds to develop teachers to lead bilingual and dual language classrooms.

Discussion: We appreciate the suggestion to add a description regarding how an SEA will use funds to develop teachers to lead bilingual and dual language classrooms. As written, the regulations provide an SEA with flexibility to describe how it will use funds to meet the purpose of title II, part A of the ESEA, as amended by the ESSA, which could include developing teachers to lead bilingual and dual language classrooms. Because of the general comments regarding reducing burden on SEAs submitting a consolidated State plan, we decline to prescribe this as a requirement for all SEAs.

Changes: None.

§ 299.18(b) Support for Educators

Comments: A number of commenters expressed support for the provisions in § 299.18(b) aimed at improving instruction by increasing the number of effective teachers and school leaders. Commenters also recommended the inclusion of strategies to improve educators' capacity to create safe and inclusive school environments and to address the impact of adversity and stress on students' readiness to learn. Other commenters requested a stronger emphasis on evidence-based strategies. One commenter urged the Department to maintain the proposed language under § 299.18(b) to ensure that each State describes how it will work with LEAs to develop or implement teacher, principal, and other school leader evaluation and support systems. One commenter also recommended that the strategies in § 299.18(b)(1)(iv) be designed to provide low-income and minority students with ''equitable'' rather than ''greater'' access to effective teachers, principals, and other school leaders. Finally, one commenter requested clarification that the use of Federal funds to improve educator evaluation systems is allowable, rather than required.

Discussion: We appreciate the general support for the proposed consolidated State plan requirements related to improving support for educators. However, we believe that States should have significant discretion in determining the specific focus of their efforts to support educators and we decline to include the additional requirements suggested by commenters. We also appreciate the lack of a robust evidence base in the area of professional development, a factor that could make new evidence requirements in this area both burdensome and ineffectual. We believe that providing ''greater'' access to effective educators is consistent with the statutory purpose of title II in section 2001 of the ESEA, as amended by the ESSA, and we note that proposed § 299.18(b)(2)(ii) is clear that an SEA must describe efforts to support LEAs in developing or implementing educator evaluation systems only if Federal funds are used for this purpose.

However, consistent with commenters' suggestions to clarify the connection between Federal funds and certain activities, we have moved the requirements that were originally found at proposed § 299.18(b)(ii) and (iii) to § 299.18(a)(3), where it is clear that such activities must be included in State plans only to the extent that they are supported with Federal funds.

Changes: We have revised the final regulations by moving the provisions in proposed 299.18(b)(2)(ii) and (iii) regarding educator evaluation and support systems and educator preparation programs, respectively, to § 299.18(a)(3).

Comments: Several commenters suggested that we revise proposed § 299.18(b)(1)(iv) to add students with disabilities to the groups for which SEAs must describe strategies for providing greater access to effective teachers, principals, and other school leaders; other commenters recommended including the full list of underserved subgroups of students addressed by the ESEA, as amended by the ESSA.

Discussion: The Department agrees that all students should have access to effective teachers, principals, and other school leaders. However, § 299.18(b)(1)(iv) is based on section 2001 of the ESEA, as amended by the ESSA, which focuses teacher equity requirements on low-income and minority students. We also note that many, if not most, of the students in the other subgroups mentioned by commenters also are low-income and minority students. For these reasons, and because adding subgroups of students beyond those specified by the statute would add considerable burden to the State plan requirements, we decline to include additional subgroups of students in the final regulations. However, we note that the regulations provide an SEA with the discretion to specifically highlight specific subgroups

of students including students with disabilities, English Learners, migratory children, and children and youth in foster care.

Changes: None.

Comments: A number of commenters recommended expanding the list of subgroups of students in proposed § 299.18(b)(2)(i) for which an SEA must describe how it will improve the skills of teachers, principals, and other school leaders in identifying students with specific learning needs in order to improve instruction based on those needs. However, two commenters recommended limiting the list of subgroups to those described in section 2101(d)(2)(J) of the ESEA, as amended by the ESSA: Children with disabilities, English learners, students who are gifted and talented, and students with low literacy levels. Other commenters stated that the requirement in proposed § 299.18(b)(2)(i) was unnecessary and overly burdensome.

Discussion: We appreciate the different perspectives provided by the commenters. After weighing these perspectives, and, in particular, in recognition of potential burden of requiring SEAs to address a large, one-size-fits-all list of subgroups of students in describing their plans for improving the skills of teachers and leaders, we are removing the list of student subgroups from this section of the final regulations. We believe States should have flexibility, in developing their consolidated State plans, to determine the subgroups of students with the greatest need for specialized instruction and related school leadership.

Changes: We have revised § 299.18(b)(2)(i) by removing the list of specific subgroups of students.

Comments: Several commenters requested that we specify subgroups of teachers and related personnel that an SEA must address in its work to support excellent educators, including early childhood educators; educators in mediums of instruction other than English; community-based educators, such as elders or native and cultural artisans and practitioners; and National Board Certified Teachers. One commenter noted the importance of including specialized instructional support personnel in State systems of professional growth and improvement.

Discussion: While the Department recognizes the value of a diverse education workforce, we decline to prescribe subgroups of educators that an SEA must address in its work to support excellent educators. The proposed regulations require an SEA describe its strategies to support teachers, principals and other school leaders and permit an SEA to include educators such as early childhood educators, community-based educators, educators in mediums of instruction other than English, and SISPs, when discussing its strategies to support educators in its State. The consolidated State plan requirements are consistent with sections 2101 and 2102 of the ESEA, as amended by the ESSA. An SEA may, at its discretion and in response to State and local needs, include other educators in its consolidated State plan, but we decline to add additional requirements in this area.

Changes: None.

Comments: One commenter recommended that the use of the term ''school leader'' align with the definition of school leader in section 8101(44) of the ESEA, as amended by the ESSA. Another commenter suggested using the word ''and'' instead of ''or'' when referring to ''teachers and principals or other school leaders.'' Another commenter recommended that we revise § 299.18(a)(2) to clarify that teachers, principals, and other school leaders are included in the State's system to ensure adequate preparation of new educators.

Discussion: We agree that the phrase ''teachers, principals, and other school leaders'' better captures the role of teachers and other school leaders. Therefore, with the exception of § 299.18(b)(2) which directly incorporates the statutory requirement in section 2101(d)(2)(J), we are revising the final regulations to incorporate the phrase ''teachers, principals, and other school leaders'' consistently throughout § 299.18(b). Additionally, we note that school leaders is defined in section 8101(44) of the ESEA, as amended by the ESSA, to include both principals and other types of school leaders. Moreover, we believe it is unnecessary to further specify in § 299.18(a)(2) that the preparation programs address teachers, principals, and other school leaders because the requirement to describe educator preparation programs includes such individuals.

Changes: We have revised § 299.18(b)(1) to refer to ''teachers, principals, and other school leaders.''

Educator Evaluation

Comments: A number of commenters stated that teacher evaluations should not be tied to student test scores. Other commenters expressed their support for ending the requirement to link evaluation and test scores. A few commenters expressed support for continuing to provide teachers with fair evaluations, using test scores, and improving teacher assessments.

Discussion: The final regulations, like the proposed regulations, do not include any requirements related to the use of student assessment results in educator evaluation systems. However, the Department released non-regulatory Title II, Part A Guidance that clarifies the statutory requirements for educator evaluation systems that are supported by title II, part A funds including the requirements in sections 2101(c)(4)(B)(ii) and 2103(b)(3)(A) of the ESEA, as amended by the ESSA, that such systems be based in part on evidence of student achievement, which may include student growth; include multiple measures of educator performance, such as high-quality classroom observations; and provide clear, timely and useful feedback to educators.

Changes: None.

Section 299.18(c) Educator Equity

Comments: Many commenters expressed support for the requirements in § 299.18(c) regarding educator equity. In particular, commenters appreciated the inclusion of the educator equity provisions within the consolidated State plan, the definitions of teacher quality indicators in § 299.18(c) and § 200.37, and the clarification of the State's authority to ensure that title II, part A funds are used to address inequities.

Discussion: The Department appreciates the expressions of support from commenters.

Changes: None.

Comment: One commenter noted the impact that an effective school leader can have on the effectiveness, satisfaction, and retention of teachers. The commenter suggested that we revise the educator equity regulations in § 299.18(c) to include language that would allow, but not require, an SEA to track the equitable distribution of effective and experienced principals and school leaders.

Discussion: The educator equity requirements in § 299.18(c) require an SEA to describe whether low-income and minority students are taught at different rates by ineffective, out-of-field, or inexperienced teachers consistent with sections 1111(g)(1)(B) of the ESEA, as amended by the ESSA. We believe further revisions to § 299.18(c)(2) are unnecessary because under § 299.18(c)(2)(vi), an SEA may, at its discretion and in response to State and local needs, include other educators in this description by identifying other definitions and key terms it will use for the purpose of meeting this requirement.

Changes: None.

Comments: One commenter advised that the Department's use of the term ''demonstrate'' in place of the statutory term ''describe'' in proposed § 299.18(c) represented a higher standard of review for the consolidated State plan, and therefore increased the burden associated with the consolidated State plan, as compared to individual program plans.

Discussion: The Department appreciates the commenter's concern and is modifying the text of this section to align with the statutory terms in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. In response to the comment regarding the burden associated with meeting this consolidated State plan requirement, we note that § 299.13(k)(1)(i) requires an SEA that files an individual title I, part A State plan to provide the same description that is required under § 299.18(c). Therefore, the burden associated with meeting the requirements of section 1111(g)(1)(B) is the same whether an SEA submits a consolidated State plan or an individual title I, part A State plan under § 299.13(k).

Changes: We have revised § 299.18(c)(1) and (3) by replacing the term ''demonstrate'' with the term ''describe.''

Comments: A number of commenters requested explicit definitions and clear guidelines around the terms ''disproportionality'' and ''disproportionate rates'' in the final regulations, with some commenters recommending that the Department include this information in § 200.37 and incorporate it by reference in § 299.18(c)(2)(vi). Other commenters specifically recommended defining disproportionality as any non-zero difference between the rates at which student subgroups are served by ineffective, inexperienced, or out-of-field teachers.

Discussion: We agree that without additional clarification, it would be difficult for SEAs to ensure they are meeting the requirements of § 299.18(c)(1); for this reason we are revising the final regulations to make clear that throughout § 299.18(c), ''disproportionality'' refers to the ''differences in rates.'' We are also revising § 299.18(c)(5), as renumbered in the final regulations, to clarify that different rates mean higher rates, defined as greater than zero.

Changes: We have revised § 299.18(c) to clarify that disproportionality refers to the ''differences in rates.'' We have also renumbered and revised § 299.18(c)(5) to define disproportionate rates as higher rates, defined as greater than zero.

Section 299.18(c)(2) Educator Equity Definitions

Comments: Some commenters supported having a definition of ''ineffective teacher'' and provided suggestions for ways to strengthen the definition. However, several commenters asked that the Department remove the requirement that an SEA establish a statewide definition of ineffective teacher. Some of these commenters indicated that requiring a definition would result in Federal interference with evaluation systems. Other commenters raised concerns that requiring the definition would violate statutory prohibitions regarding teacher evaluation systems.

Discussion: Section 1111(g)(1)(B) and (2)(A) of the ESEA, as amended by the ESSA, requires each SEA to describe how low-income and minority children enrolled in title I schools are not served at disproportionate rates by, among other teachers, ''ineffective teachers'' and to make public the methods or criteria the State is using to measure teacher effectiveness for the purpose of meeting this educator equity requirement. The requirements that an SEA provide its definition of ''ineffective teacher,'' or its guidelines for LEA definitions of ''ineffective teacher,'' and that the definition or guidelines differentiate between categories of teachers and provide useful information about educator equity, are essential for ensuring compliance with this statutory requirement. Without a definition or guidelines for local definitions of ''ineffective teachers,'' the related data, inequities, and strategies to address inequities described by an SEA would be meaningless to the public and to policy makers. Accordingly, these requirements constitute a proper exercise of the Department's rulemaking authority under GEPA, the DEOA, and section 8302 of the ESEA, as amended by the ESSA. With respect to comments that this requirement violates specific provisions of the statute, section 1111(e)(1)(B)(iii)(IX) and (X) of the ESEA, as amended by the ESSA, provides that ''nothing in this Act shall be construed to authorize or permit the Secretary . . . to prescribe (IX) any aspect or parameter of a teacher, principal, or other school leader evaluation system within a State or LEA, or (X) indicators or specific measures of teacher, principal, or other school leader effectiveness or quality.'' However, requiring a statewide definition of, or statewide guidelines for LEA definitions of, ''ineffective teacher'' in no way constitutes prescribing an aspect or parameter of an evaluation system, nor the indicators or specific measures of effectiveness or quality.

With respect to the specific suggestions regarding what should be addressed in the definitions of ''ineffective,'' we believe that the regulations appropriately ensure that these definitions are developed at the State and local level. We further note that the final regulations ensure that each SEA determine and make public a definition, or provide statewide guidelines to its LEAs to determine a definition of ''ineffective.'' Local context and discretion is important, and we believe it is critical that States and districts are the ones to define the term ''ineffective.'' Therefore, we decline to include these recommendations in the regulations.

Changes: None.

Comments: Several commenters recommended changes to the requirements in the proposed regulations for defining an ''out-of-field'' teacher, including aligning those requirements with the definition used in § 200.37, creating a uniform definition that all States must use, and providing flexibility for States to adopt a definition that differs from that used for § 200.37.

Discussion: We note that the requirements for defining an ''out-of-field teacher'' in § 299.18(c)(2)(ii) are aligned with requirements of § 200.37 in both the proposed and final regulations. We further note that while there may be some benefits to a uniform definition that is comparable across all States and districts, we believe that SEAs should have flexibility to develop a statewide definition that reflects State and local needs and circumstances. However, we are concerned that permitting different definitions under §§ 200.37 and 299.18 could result in masking the number of ''out-of-field'' teachers that are teaching in high-need subjects and schools with chronic teacher shortages, increasing data collection and reporting burdens for SEAs and LEAs, and reducing transparency for educators and the public alike.

Changes: None.

Comments: A number of commenters recommended specific definitions of ''inexperienced teacher'' in § 299.18(c)(2)(iii), including alignment with the requirements of § 200.37 and uniformity across a State.

Discussion: Similar to the requirements for defining an ''out-of-field'' teacher, we note that the requirements for defining an ''inexperienced'' teacher in

§ 299.18(c)(2)(iii) are aligned with the requirements of § 200.37 in both the proposed and final regulations. While we appreciate the specific definitions recommended by commenters, we believe that SEAs should have flexibility to develop or adopt definitions that reflect State and local needs and circumstances. We agree with commenters that further guidance on the definitions required by § 299.18(c) may be helpful and will consider providing such guidance at a future time.

Changes: None.

Comments: None.

Discussion: After review of proposed § 299.18(c)(2), which required the educator equity definitions ''to provide useful information about educator equity and disproportionality rates,'' we determined that the placement of the phrase was too broad and potentially confusing to SEAs. As a result, we are clarifying that the phrase ''to provide useful information about educator equity and disproportionality rates'' was only intended to apply to the three teacher characteristics.

Changes: We have revised § 299.18(c)(2)(i)–(iii) by adding the phrase ''and provides useful information about educator equity'' to all three required teacher characteristic definitions.

Comments: Several commenters supported the use of ''distinct criteria'' in establishing the definitions required by § 299.18(c)(2), with some commenters also recommending various options for strengthening this requirement, including, for example, limiting the measures that may be used to define each term or allowing definitions to share certain criteria.

Discussion: We appreciate the support of commenters, as well as their interest in strengthening the final regulations. However, we note that section 1111(e)(1)(B)(iii)(X) of the ESEA, as amended by the ESSA, prohibits the Secretary from prescribing indicators or specific measures of teacher, principal, or other school leader effectiveness or quality. In light of this prohibition, we decline to further specify or limit the measures that may be used by an SEA in establishing the definitions required by § 299.18(c)(2).

We further clarify that the regulations are intended to ensure that each definition is be wholly unique and based on entirely different criteria. That is, an SEA may not use part of any definition for each of the terms ''ineffective,'' ''inexperienced,'' or ''out-of-field'' in defining each of the other terms. We believe that this requirement is necessary and appropriate to ensure that each of these terms is defined in a manner that reflects the statutory intent of providing three unique pieces of information on teacher characteristics related to ensuring equitable access to effective teaching. Additionally, allowing an SEA to use a part of a definition for one particular term in the definition of another term is likely to impact the ability of the data to provide useful information about educator equity.

Changes: None.

Comments: A number of commenters recommended that we revise the proposed regulation in § 299.18(c), which requires SEAs to determine the differences in rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers, to include additional student subgroups, including children with disabilities, English learners, and rural students. One commenter recommended that we also revise § 299.18(c)(3)(ii), which permits an SEA to calculate and report the rates at which students represented by other key terms are taught by ineffective, out-of-field, and inexperienced teachers, to clarify that ''students represented by any other key terms'' may include children with disabilities, English learners, and rural students.

Discussion: The Department recognizes that, in some cases, other subgroups of students are being taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and § 299.18(c)(2)(vi) and (3)(ii) permit an SEA to include other subgroups of students when calculating such rates. However, requiring, rather than permitting, such analyses for other subgroups of students would not be consistent with section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, which focuses solely on low-income and minority children.

Changes: None.

Section 299.18(c)(3) Educator Equity Rates and Student-Level Data Requirement

Comments: Some commenters expressed general support for student-level data requirements in proposed § 299.18(c)(3)(i) to report the rates described in § 299.18(c)(1) ''based on student-level data.'' Commenters stressed the importance of evaluating within-school inequities in students' access to effective teaching, in addition to between school inequities, and that such an analysis requires the collection of student-level data. However, a few commenters suggested removing the student-level data requirement stating that the requirement is burdensome and not justified in the ESEA, as amended by the ESSA. Commenters also requested clarification on what constitutes student-level analysis.

Discussion: We appreciate commenters' support for requiring the collection and reporting of student-level data to meet the educator equity requirements of section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Student-level data are necessary to evaluate inequities within schools and to determine the relationship between specific student and teacher characteristics.

One study [29] examined how a sample of districts with high low-income, minority populations implemented policies for distributing effective teachers equitably. This two-year study found that a low-income student was more than twice as likely to have a less effective teacher as a higher income peer, and 66 percent more likely to have a less effective math teacher. The patterns were even more pronounced for students of color, with Latino and African-American students two to three times more likely (in math and reading/language arts, respectively) to have bottom-quartile teachers than their white and Asian peers.

Another multi-site, multi-year study [30] conducted by RAND Corporation found that when policies for distributing effective teachers equitably were implemented in a sample of districts with high low-income minority (LIM) populations, effective teachers were generally more likely to be assigned to those schools with higher proportions of low-income and minority students than other schools, but, within a school, effective teachers were generally less likely to be assigned to classes with higher proportions of low-income minority students than to other classes. That is, the most-effective teachers were placed in schools with high percentages of low-income minority students, but they were not placed in high-LIM classrooms within those schools. This suggests that improving low-income minority students' access to effective teachers requires efforts to ensure within-school access to effective teachers in addition to between-school access.

[29] Learning Denied: The Case for Equitable Access to Effective Teaching in California's Largest School District. Oakland, CA: The Education Trust West, 2012. *http://edtrust.org/wp-content/uploads/2013/10/ETW-Learning-Denied-Report_0.pdf.*

[30] Baird, Matthew D., John Engberg, Gerald Hunter and Benjamin Master. Trends in Access to Effective Teaching: The Intensive Partnerships for Effective Teaching Through 2013–2014. Santa Monica, CA: RAND Corporation, 2016. *http://www.rand.org/pubs/research_briefs/RB9907.html.*

Though some commenters suggested removing the student-level data requirement altogether, the Department has determined that requiring student-level data is not only justified, but indeed, necessary to ensure compliance with the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that an SEA describe how low-income and minority children enrolled in schools assisted under title I, part A are not served at disproportionate rates than other children in the State by ineffective, out-of-field and inexperienced teachers. Because the required analysis is of the rates at which particular groups of children are served by teachers, and not the rates at which particular schools are served by teachers, requiring SEAs to use student-level data to inform the required description in order to ensure that they meet the statutory requirement constitutes a proper exercise of the Department's rulemaking authority.

We appreciate commenters' suggestions regarding clarification of how to implement the student-level data requirement and note that the Department plans to provide technical assistance and other support in this area, building in part on best practices from States already collecting and reporting student-level data.

Changes: None.

Comments: A few commenters recommended aligning the language in the requirement in § 299.18(c)(3)(ii) regarding the use of student-level data by SEAs who choose to examine differences in rates for other student groups, with the student-level data requirement in § 299.18(c)(3)(i) for required student groups.

Discussion: We decline to align the language because section 1111(g)(1)(B) only requires an SEA to provide educator equity data for low-income and minority students. If an SEA chooses to examine differences in rates for other student groups, an SEA has flexibility in determining the level of data to use in that analysis.

Changes: None.

Comments: Some commenters questioned whether the student-level data requirement, including the option of a two-year extension for the reporting of student-level data under proposed § 299.13(d)(3), conflicts with section 2104(a) of the ESEA, as amended by the ESSA, which prohibits the Department from requiring the collection and reporting of any data on the retention rates of effective teachers that was not available on the day before ESSA was enacted.

Discussion: We do not believe that the proposed regulations implementing section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, conflict with section 2104(a) of the ESEA. More specifically, the rule of construction in section 2104(a)(4) of the ESEA, as amended by the ESSA, which limits the collection of data on the retention rates of ineffective and effective teachers to data elements collected prior to enactment of the ESSA, applies only to the title II, part A, reporting requirement regarding teacher retention, and there is no similar rule applicable to section 1111(g)(1)(B) of the ESEA, as amended by the ESSA.

Changes: None.

Comments: Several commenters expressed that the proposed comparison of rates—between low-income and minority students enrolled in schools receiving title I, part A funds and non-low-income and non-minority students enrolled in schools not receiving title I, part A funds—would yield little useful information in a State where the majority of schools receive title I, part A funds. Some commenters also asserted that the statutory language requires that low-income students and minority students at schools receiving title I, part A funds be compared to all non-low-income students and non-minority students at any school, regardless of that school's receipt or non-receipt of title I, part A funds, and recommended revising the final regulations consistent with this interpretation of the statute. Other commenters cited what they described as the inconsistency of proposed in § 299.18(c) with the report card requirement in § 200.37, which calls for disaggregation of teacher qualification data between high- and low-poverty schools. Similarly, one commenter suggested revising the proposed comparison groups to focus on high- and low-poverty schools (using the § 200.37 definition) and high- and low-minority schools (defined as schools in the top and bottom quartile for minority student enrollment). Finally, several commenters expressed concern that the proposed comparison groups would not help identify or address between-school or within-school inequities.

Discussion: Section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, specifically requires that SEAs describe how low-income and minority children ''enrolled in schools assisted under this part'' are not served at disproportionate rates by certain teachers. Based on this language, we proposed comparison groups that we believe will be most likely to illuminate inequities with respect to the students identified by the statute. Although we appreciate the difficulties of making this comparison in a State or an LEA in which the majority of schools receive title I, part A funds, we believe that an alternative comparison group comprised of all schools in the State would be inconsistent with the statutory language prescribing the groups of students for whom disproportionate rates must be described. Further, such a comparison group would mask the differences in rates at which low-income and minority students enrolled in schools receiving title I, part A funds and their peers are taught by certain teachers. Requiring a comparison between high-poverty and low-poverty schools identified for purposes of compliance with § 200.37 would likewise be inconsistent with the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, because a State's high-poverty school quartile does not necessarily include all of a State's title I, part A schools. Accordingly, we have maintained the proposed comparison groups in these final regulations.

With respect to commenters' concern that the selected comparison group would not sufficiently illuminate between-school or within-school inequities, as discussed above in the *Student-level Data Requirement* discussion and below in the *Section 299.18(c)(5) Causes of and Strategies to Address Differences in Educator Equity Rates* discussion, we have retained the student-level data requirement in § 299.18(c)(3)(i) and amended § 299.18(c)(5)(i) to replace root cause analysis with ''likely causes'' including an analysis of within-school differences in rates to ensure that between-school or within-school inequities are considered.

Changes: None.

Section 299.18(c)(5) Causes of and Strategies To Address Differences in Educator Equity Rates

Comments: Multiple commenters stated that the requirement that SEAs conduct a ''root cause analysis'' in proposed § 299.18(c)(6)(i) is confusing, unnecessary, and overly prescriptive, with some commenters recommending that determinations regarding the appropriate level and method of analysis be left to SEAs. Another commenter recommended that the Department specifically require that an SEA analyze the extent to which disparities between LEAs within the State, between schools within LEAs, and within schools contribute to any statewide disparity, and then examine the causes of any disparity at each level.

Discussion: While the Department believes that it is necessary and appropriate for SEAs to determine the likely causes of the identified

differences in the rates at which certain subgroups of students are taught by teachers with certain characteristics, our inclusion of the term ''root cause analysis'' was not intended to specify a particular methodology for determining such causes, and we are revising the final regulations to eliminate this term. We also are revising the language in the renumbered § 299.18(c)(5)(i) to clarify that an SEA must determine the likely causes of the most significant differences in the rates at which certain subgroups of students are taught by teachers with certain characteristics. To provide further clarity, we added examples of such causes. We have also aligned the language in § 299.18(c)(5)(i) with the Department's May 2015 non-regulatory guidance regarding State Plans to Ensure Equitable Access to Excellent Educators so that the regulations now incorporate language with which SEAs are familiar. In so doing, we have clarified the requirement and minimized the burden it imposes on SEAs by incorporating the guidance language that SEAs previously relied upon when developing educator equity plans in 2015.

We also agree with the commenter who advised that, to maximize the benefits associated with student-level data, the Department require that an SEA analyze the extent to which disparities at different levels contribute to the statewide differences in rates, and the causes of the disparities at each of those levels. As discussed in the student-level data discussion above, the benefits associated with calculating and reporting student-level data statewide are substantial because it illuminates within-school disparities; accordingly, we have amended this portion of the regulation to take advantage of the student-level data requirement in § 299.18(c)(3).

Changes: We have revised and renumbered § 299.18(c)(5)(i) to replace the phrase ''root cause analysis'' with ''identify the likely causes'' and clarified that SEAs need only identify the likely causes of the most significant differences in rates.

We have further revised § 299.18(c)(5)(i) to clarify that an SEA must identify whether the differences in rates at which certain student subgroups are taught by teachers with certain characteristics reflect differences between districts, within districts, and within schools, as well as the likely causes of those differences in rates, for example: Teacher shortages, working conditions, school leadership, compensation, or other factors.

Comments: Some commenters expressed support for the requirement that SEAs prioritize efforts aimed at reducing the extent to which low-income and minority students are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers in schools identified for comprehensive or targeted support and improvement.

Other commenters recommended allowing States to prioritize strategies focused on the teacher attribute with the most negative effects on student outcomes; for example, if State data showed that student performance suffered the most from inexperienced teachers, an SEA could elect to focus its efforts on reducing students' disproportionate exposure to inexperienced teachers.

Discussion: We appreciate commenters' support for the requirement that SEAs prioritize efforts aimed at eliminating disproportionalities in schools identified for comprehensive or targeted support. Further, we appreciate commenters' recommendation to include additional options for prioritization. We agree that this may be an important approach to lessening the differences in rates and are revising the regulatory language to allow an SEA additional flexibility to provide in its State plan strategies for the most significant differences in rates as described by the SEA.

Changes: We have revised § 299.18(c)(5) to allow SEAs to prioritize strategies to address the most significant differences in rates as identified by the SEA.

Comments: One commenter supported the proposed requirement that an SEA include in its State plan the timelines and funding sources for its strategies to address inequitable access to excellent educators.

Discussion: We agree with the commenter that an SEA must provide timelines and funding sources to ensure successful implementation of its strategies to address inequitable access to effective educators and are retaining this requirement in the final regulations. Additionally, we are clarifying that an SEA must describe whether Federal or non-federal funds will support the identified strategies.

Changes: We have clarified § 299.18(c)(5)(ii) to require each SEA to describe whether Federal or non-federal funds will support its educator equity strategies.

Progress Targets and Monitoring

Comments: Some commenters requested additional detail in proposed § 299.18(c)(6) on how each SEA planned to monitor its progress in eliminating any disproportionate rates at which low-income and minority children are served by ineffective, out-of-field, or inexperienced teachers. Commenters encouraged the Department to define ''progress'' and require clear goals, timelines, and progress targets. Commenters also suggested requiring SEAs to describe the manner in which the State will monitor and support LEA efforts to eliminate such disparities.

Discussion: Section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, requires each SEA to describe how low-income and minority children enrolled in title I, part A schools will not be served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. Therefore, if an SEA identifies any difference in rates, the SEA must work to eliminate the difference in rates. Consequently, we agree with commenters that to effectively eliminate a difference in rates, it is important to establish clear goals towards eliminating any differences in rates and report progress towards those goals, and we are revising the final regulations accordingly.

Changes: In renumbered § 299.18(c)(5)(iii), we have added a requirement for each SEA to describe timelines and targets for eliminating any differences in rates at which low-income and minority students enrolled in title I, part A schools served by inexperienced, out-of-field, and ineffective teachers.

Other Educator Equity Issues

Comments: Some commenters asserted that the phrase ''or statewide guidelines for district definitions of ineffective teacher'' in § 299.18(c)(2)(i) effectively permits States where districts do not provide teacher appraisal data to the State, or where the provision of such data is prohibited by State law, to comply with the statute.

Other commenters claimed that requiring SEAs to define and report on ''ineffective teachers'' inherently requires State evaluations that include an indicator for effectiveness, which commenters assert is prohibited in the ESEA, as amended by the ESSA.

Other commenters asserted that the requirements in § 299.18(c)(2)(v) must not violate individual privacy rights of teachers. Commenters noted that educator evaluation data are protected by law in some States, and claimed that reporting information required by the proposed regulation is prohibited. Commenters recommended that publication of data must be consistent with State and Federal privacy laws and principles, in addition to any other policies regarding the confidentiality of personnel information, and should not

allow publication of data that is personally identifiable of individual teachers.

Discussion: The phrase ''or Statewide guidelines for LEA definitions of ineffective teacher'' in § 299.18(c)(2)(i) does not provide an exception to the requirement for reporting uniform teacher effectiveness data to the State; rather, this phrase gives SEAs the flexibility to allow variance in LEA definitions of ''ineffective teacher'' so long as each LEA complies with the statewide guidelines. Although commenters asserted that certain State laws prohibit local entities from providing teacher appraisal data to the State entity, an SEA receiving title I, part A funds is required to report on ineffective, out of field, or inexperienced teachers in order to comply with section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Further, to meet the requirements in § 299.18(c) an LEA may report aggregate numbers without any personally identifying information.

As discussed earlier, we do not agree that requiring each SEA to define and report on ineffective teachers is prohibited by the ESEA, as amended by the ESSA, because it is necessary for meeting the requirements of section 1111(g)(1)(B) of the ESEA. Further, consistent with the statutory provision in section 1111(e)(1)(B)(iii)(X), the final regulations, like the proposed regulations, require SEAs to establish their own definitions of ''ineffective teacher'' and do not prescribe the use of any specific definition.

We agree with commenters that the requirements in § 299.18(c)(2)(v) must not violate individual privacy rights of teachers. Section 1111(i)(1) of the ESEA, as amended by the ESSA, specifies that ''information shall be collected and disseminated in a manner that protects the privacy of individuals consistent with section 444 of GEPA (20 U.S.C. 1223g, commonly known as [FERPA]) and this Act.'' Consistent with these requirements, we are revising the final regulations to clarify that reporting under § 299.18(c) must be consistent with FERPA. Commenters noted that evaluation data are protected by law in some States, and claimed that reporting information required by the proposed regulation is prohibited. However, this is not the case because there is no requirement that any of these data be personally identifiable.

Changes: We have revised § 299.18(c)(4) by adding a provision clarifying that when publishing and reporting educator equity information in § 299.13(c)(1)(iii), SEAs must comply with FERPA, 20 U.S.C. 1232g, and applicable regulations.

Comments: One commenter asked that the Department include a savings clause which would allow collective bargaining agreements and State laws that already define the statutory terms in § 299.18(c) to remain intact and enforceable even given the requirements in § 299.18(c).

Discussion: The Department does not believe that a savings clause to accommodate collective bargaining agreements or State laws is necessary because an SEA has discretion in defining the statutory terms related to ineffective, inexperienced, or out-of-field teachers, consistent with § 299.18(c). Accordingly, an SEA should have sufficient flexibility to define these terms consistent with State law and in ways that do not violate collective bargaining agreements.

Changes: None.

Comments: Several commenters requested that the Department protect charter school autonomy by preserving the ability of charter schools to hire teachers that meet the needs of their students, consistent with State charter school law. These commenters recommended the final regulations clarify that State definitions of ineffective, inexperienced, or out-of-field teachers, as they apply to charter schools, must defer to State charter school law. Furthermore, commenters asked that the Department include language clarifying that SEAs must carry out the requirements under § 299.18(c) and § 200.37, as they affect teachers in charter schools, in a manner consistent with State charter schools law and all other State laws and regulations governing public school teacher evaluation.

Discussion: As a condition of receiving title I, part A funds, an SEA must ensure compliance with all applicable statutory and regulatory requirements, including the requirements in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, and § 299.18(c) of these final regulations. We note that under the final regulations, each SEA and, in the case of the term ''ineffective teachers'' in States that elect to provide LEAs with statewide guidelines for defining this term in lieu of providing a statewide definition, districts, have substantial latitude in defining the terms ineffective, inexperienced, and out-of-field in a manner that is consistent with State charter schools law and all other State laws and regulations governing public school teacher evaluation.

Changes: None.

Section 299.18(c)(6) State Authority To Deny LEA Plans and Direct LEA Use of Title II, Part A Funds

Comments: Two commenters expressed strong support for the Department's proposal to permit an SEA to direct an LEA to use a portion of its title II, part A funds to provide low-income and minority students greater access to effective teachers and to require an LEA to describe in its title II, part A plan how it will use such funds to address any differences in rates at which certain subgroups of students are taught by teachers with certain characteristics and to deny approval of the plan if an LEA fails to do so.

Discussion: The Department appreciates commenters support for these provisions.

Changes: None.

Section 299.19 Supporting All Students

Ensuring All Students Have the Opportunity To Meet State Standards

Comments: Some commenters expressed support for the requirement in proposed § 299.19(a) that each SEA describe how it will ensure that all students have a significant opportunity to meet its challenging State academic standards and career and technical education standards, as applicable. Some of these commenters requested that the Department require each SEA to describe how it will incorporate additional, specific strategies in its efforts to support students in meeting such standards, including personalized learning, expanded learning time, and early developmental and behavioral screening. Further, one commenter requested that the Department extend the continuum of a student's education covered under § 299.18 college and career.

Other commenters suggested that the Department include additional requirements in § 299.19, such as consultation requirements specific to this section; efforts to engage families of traditionally underserved students; and reporting on equitable access to a well-rounded coursework.

Other commenters stated that the proposed requirements in § 299.19(a) were overly burdensome and were not necessary to consider a consolidated State plan under section 8302 of the ESEA, as amended by the ESSA.

Discussion: The Department appreciates commenters' support of the requirements in proposed § 299.19(a). However, to streamline and reduce burden in the preparation of consolidated State plans, we are revising the requirements in § 299.19(a)

to focus on the use of funds for title IV, part A and other included programs to support the continuum of a student's education and provide equitable access to a well-rounded education and rigorous coursework. We also are revising § 299.19(a)(1) to ensure that each SEA supports LEAs doing this work, as well the remaining subsections in § 299.19(a) to require descriptions of the SEA's strategies for school conditions, technology, and parent engagement to the extent that an SEA intends to use Federal funds for such purposes which may have significant benefit to students.

Consistent with this effort to streamline requirements in § 299.18(a), we also decline to include additional strategies in the required descriptions of SEA activities and plans or to extend the continuum of education covered by such plans beyond grade 12. However, we note that § 299.19(a)(1)(i) continues to require an SEA to describe how it will support a student's transition beyond high school. We also believe that consultation related to § 299.19(a) is adequately addressed by the consultation requirements in § 299.15(a) that requires that each SEA to consult with stakeholders on each component of the consolidated State plan. Further, the Stakeholder DCL provides recommendations on how States can meaningfully engage with stakeholders, including strategies to ensure engagement with parents of students from socioeconomically diverse backgrounds, parents of students from subgroups identified by the ESEA, as amended by the ESSA, and parents of students with disabilities. The Stakeholder DCL is available at *http://www2.ed.gov/policy/elsec/guid/secletter/160622.html.* Similarly, existing reporting requirements in section 1111(h)(1)(viii) and (2)(C) of the ESEA, as amended by the ESSA, address some aspects of equitable access to coursework and we decline to expand those requirements in the final regulations.

Changes: We have revised § 299.19(a)(1) to focus on the use of funds provided under title IV, part A and other included programs to support the continuum of a student's education and provide equitable access to a well-rounded education and rigorous coursework. We also have revised § 299.19(a)(2) to require an SEA to provide descriptions of its strategies only if it intends to use funds from title IV, part A funds or included programs for the specific activities detailed in paragraph (a)(2).

Arts

Comments: Many commenters requested that the Department include ''arts'' in the list of subjects described under proposed § 299.19(a)(1)(ii) regarding equitable access to a well-rounded education and rigorous coursework.

Discussion: The proposed regulations inadvertently omitted ''arts'' from the list of subjects in § 299.19(a)(1)(ii). We are revising the final regulations to correct this omission.

Changes: We have revised § 299.19(a)(1)(ii) to include ''arts'' in the list of subjects included in a well-rounded education.

School Conditions

Comments: Many commenters requested that the Department expand and further define the requirements in proposed § 299.19(a)(1)(iii) regarding school conditions for student learning, including, for example, a definition for the ''overuse'' of discipline practices and ''aversive behavioral interventions,'' adding examples of such interventions, and describing strategies to create safe, healthy, and affirming school environments inclusive of all students.

Discussion: The requirement in § 299.19(a)(1)(iii) is consistent with section 1111(g)(1)(C) of the ESEA, as amended by the ESSA. We appreciate the suggestions and underscore the importance of ensuring that all students have access to a safe and healthy learning environment. In recent years, the Department has released guidance and numerous resources that describe best practices to improve school climate and school discipline, as well as guidance on how schools can meet their obligations under Federal law to administer student discipline without discriminating on the basis of race, color, or national origin (for example, see *http://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html*). *We* believe this requirement will ensure that an SEA works with its LEAs to implement locally designed activities to promote school conditions for student learning. We also agree that specific strategies related to safe, healthy, and affirming school environments for all students are essential to improve school conditions and are revising this regulation accordingly.

Changes: We have revised § 299.19(a)(2)(i) to require each SEA using funds for this purpose to describe strategies to improve school conditions that create safe, healthy, and affirming school environments inclusive of all students.

Effective Use of Technology

Comments: A few commenters recommended that the Department ensure that all students, including for students with disabilities, have access to computers and broadband internet connections because many jobs in the future will have a science, technology, engineering, and mathematics (STEM) component. Another commenter noted that the statute only requires SEAs to describe how they will support LEAs, rather than requiring an SEA to describe its strategies. The commenter recommended that we revise the language in proposed § 299.19(a)(1)(iv) to more closely reflect the statutory language.

Discussion: We agree that access to the computers and the internet is an important part of a high-quality education and supports STEM education for all students. We also agree that the final regulations should be more closely aligned with statutory requirements. For these reasons, we are revising the final regulations to require an SEA to describe how it will support LEAs to effectively use technology only if the SEA is proposing to use funds under one or more of the included programs for that purpose. We also are revising § 299.19(a) to focus on SEA support for LEA efforts to use technology effectively.

Changes: We have revised § 299.19(a)(2) to require an SEA to describe its strategies to support LEAs to effectively use technology to improve academic achievement only if the State is proposing to use funds under one or more of the included programs for that purpose.

Accurate Identification of Children With Disabilities and English Learners

Comments: One commenter noted the importance of identifying disabilities early in a child's educational experience. The commenter recommended that we revise proposed § 299.19(a)(1)(vi) to add that the identification of children with disabilities includes the early identification of children with disabilities.

Discussion: We agree with the commenter that the early identification of students with disabilities is critical and results in the provision of required special education and related services to eligible children as early as possible in the course of their education. However, because the importance of, and timely and accurate identification of eligible children with disabilities is already addressed in the IDEA and its implementing regulations, the

Department has determined that including similar requirements in these final regulations would be unnecessarily duplicative and burdensome. Consequently, the final regulations would instead require an assurance in § 299.14(c)(5) that the SEA has policies and procedures in effect regarding the appropriate identification of children with disabilities consistent with the child find and evaluation requirements in section 612(a)(3) and (a)(7) of the IDEA, respectively. This assurance is necessary to ensure the purpose of section 1001 of the ESEA, as amended by the ESSA, is met ''to provide all children a significant opportunity to receive a fair, equitable and high quality education'' and to coordinate title I, part A activities under section 1111(a)(1)(B) with federal programs, including Part B of the IDEA.

The appropriate identification of students with disabilities is addressed in the IDEA and its implementing regulations in sections 612(a)(3) and (a)(7) and 614(a)–(c) and 34 CFR 300.111, 300.122, and 300.300–300.311. In order to be eligible for an IDEA Part B grant, a State is required to submit a plan that provides assurances that the State has in effect policies and procedures to ensure that the State meets specific conditions prescribed in section 612 of the IDEA, including that all children with disabilities residing in the State, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated in accordance with applicable IDEA Part B requirements. These requirements are designed to ensure that eligible children are appropriately identified and provided required special education and related services in a timely manner.

Proposed § 299.19(a)(1)(vi) also required the accurate identification of English learners which unnecessarily duplicated other statutory and regulatory requirements, including section 3113(b)(2) of the ESEA, as amended by the ESSA, and § 299.13(c)(2) of these final regulations.

Changes: We have revised § 299.19(a)(1) by removing the requirement that each SEA address the accurate identification of children with disabilities and English learners. We have added an assurance in § 299.14(c)(5) regarding the appropriate identification of children with disabilities.

Subgroups of Students Whom States Must Address

Comments: Several commenters supported the inclusion of particular subgroups in proposed § 299.19(a)(2)(i), such as students in foster care, homeless children and youth, and children with disabilities, while others recommended the addition of other groups of vulnerable students, including those aligned with eligible in-school youth definitions under WIOA and students taught primarily through Native American languages. However, other commenters expressed concern about the burden associated with addressing the needs of the required subgroups in State plans.

Discussion: We appreciate the commenters' support for proposed § 299.19(a)(2)(i). While an SEA may choose to address the needs of additional subgroups of students in its State plan, we decline to include additional subgroups in the final regulations, in part because we believe most, if not all, of the students in the additional subgroups proposed by commenters are likely to be captured by one or more of the existing subgroups in final § 299.19(a)(1)(iii). In response to concerns about administrative burden, we note that while an SEA must address the needs of each subgroup in § 299.19(a)(1)(iii), it does not have to address each subgroup of students individually; for example, it may use a single strategy to address the needs of multiple subgroups.

Changes: None.

Physical Education

Comments: One commenter recommended that the Department provide guidance regarding use of title IV, part A funds to support physical education.

Discussion: The Department will be issuing guidance on allowable uses of title IV, part A funds, including use of these funds to support physical education.

Changes: None.

Title I, Part C Priority for Services Requirements

Comments: None.

Discussion: Based on further internal review, we have determined that the proposed requirement in § 299.19(c)(2)(v) for each SEA to describe its processes and procedures when implementing priority for services for migratory students under section 1304(d) of the ESEA, as amended by the ESSA, would place an unnecessary burden on SEAs. Under the final regulations, each SEA must describe the measures and data sources used in making priority for services determinations, as well as when and how such determinations will be communicated on a statewide basis, but it will not be required to describe how it will delegate responsibilities for documenting such determinations and the provision of services. Finally, the Department is aligning the requirement in § 299.19(b)(2)(v) to the statutory requirement in section 1304(b)(4) of the ESEA, as amended by the ESSA. The description in final § 299.19(b)(2)(v) is more limited because the SEA is required to only describe its priorities for the use of title I, part C funds related to the needs of migratory children with ''priority for services.''

Changes: We have revised § 299.19(b)(2)(v) to require each SEA to describe only its priorities for the use of title I, part C funds related to the needs of migratory children with ''priority for services,'' including (1) the measures and sources of data the SEA, and if applicable, its local operating agencies (LOAs), which may include LEAs, will use to identify which migratory children are a priority for services; and (2) when and how the SEA will communicate those determinations to all LOAs in the State.

Title III, Part A Standardized Entrance and Exit Procedures for English Learners

Comments: Some commenters generally supported proposed § 299.13(c)(3), including the requirement that criteria to determine a student's placement in or exit from English learner status be applied consistently across LEAs in a State. While supporting proposed § 299.13(c)(3) generally, other commenters requested clarification of some of the provisions in proposed § 299.13(c)(3), including their application to both entrance and exit criteria, assurances related to criteria other than ELP assessment results, the input of local educators on exit decisions, and continued eligibility for services following exit from English learner status.

Finally, some commenters expressed various concerns. Specifically, one commenter opposed the requirement to include criteria and not just procedures in proposed § 299.19(c)(3), asserting that the statute does not require criteria but only procedures; another expressed concern that proposed § 299.19(c)(3) does not allow for locally administered assessments as part of an SEA's exit criteria, and one questioned the need for proposed § 299.19(c)(3)(iv), which references civil rights obligations, given that proposed § 299.13(c)(2) appears to address the requirement.

Discussion: We appreciate commenters' general support for proposed § 299.19(c)(3). Under

proposed § 299.19(c)(3), an SEA's standardized entrance and exit procedures must include valid, reliable, and objective criteria that are applied consistently across the State. We agree that it is important for an SEA to consistently apply both entrance and exit criteria and that the criteria that an SEA selects, in addition to results on an SEA's ELP assessment, must be narrowly defined such that they can be consistently applied in LEAs across the State. However, we believe that final § 299.19(b)(4) sufficiently ensures these parameters around entrance and exit criteria.

With regard to including local input in an SEA's exit criteria, under proposed § 299.19(c)(3), which is moved to § 299.19(b)(4) in the final regulations, an SEA may incorporate local input that is valid, reliable, objective, and applied and weighted the same way across the State. For example, an SEA's exit criteria may include local input such as the use of an observational protocol or rubric-graded portfolio, as long as such input is applied and weighted consistently across the State. Thus, the regulations permit a local team to recommend continuing a student in English learner status even if the student scores proficient on the State's ELP assessment.

We also note that a student may continue to receive English language support with local or State funds even after exiting from English learner status. Furthermore, we will consider reemphasizing this in guidance.

Regarding concern over the requirement that an SEA's standardized entrance and exit procedures must also include criteria, as discussed earlier, under GEPA and DEOA, the Secretary has general rulemaking authority. Therefore, it is not necessary for the Act to specifically authorize the Secretary to issue a particular regulatory provision. Given the title III, part A requirement to describe statewide entrance and exit procedures under section 3113(b)(2) of the ESEA, as amended by the ESSA, we believe it is within our regulatory authority to ensure that the procedures include criteria that will ensure the purposes of title III, part A are met, including to ensure that English learners attain ELP and develop high levels of academic achievement in English. With respect to the use of locally administered assessments, the Department believes that final § 299.19(b)(4) appropriately precludes use of locally administered ELP assessments as part of its exit criteria, as local assessments, by definition, are not standard across the State. However, local assessments may be used to help identify the needs of and appropriate instructional supports for English learners so that they can attain English proficiency. Finally, we agree with the commenter regarding proposed § 299.19(c)(3)(iv) on civil rights obligations, and are moving that provision to § 299.13(c)(2).

Changes: We have removed proposed § 299.19(c)(3)(iv) and added necessary text to § 299.13(c)(2) requiring an SEA to provide an assurance that its exit procedures as well as its entrance procedures are consistent with civil rights obligations.

Title III, Part A Exit Procedures for English Learners

Comments: Some commenters supported proposed § 299.19(c)(3), which restricts the use of content area assessments as part of an SEA's standardized exit criteria, with one commenter explaining that content area assessments are neither designed nor intended to measure a student's ELP and thus should not be used as a criterion in deciding to continue a student in or exit a student from English learner status. This same commenter, however, asserted that an SEA can and should use results of content area assessments to set academic achievement standards (*i.e.,* ''cut scores'') on the SEA's ELP assessment, particularly to help mitigate against cut scores that result in students prematurely exiting English learner status.

Commenters who opposed the restriction generally sought greater flexibility in using the results of content area assessments to inform decisions on both continuing a student in or exiting a student from English learner status. For example, some commenters stated that it may be appropriate to use the results of content assessments to continue a student's English learner status if the ELP assessment is not fully aligned with a State's academic content standards or the cut scores on the ELP assessment have not been set at appropriate levels and thus could result in a student prematurely exiting English learner status (and potentially violating a student's civil rights). Among commenters who supported using the results of content assessments to exit students from English learner status, one commenter asserted that a student who scores proficient on the State's reading/language arts assessment, but just below a score of proficient on the State's ELP assessment, should be permitted to exit English learner status, and that such flexibility could help account for error in ELP assessments. Finally, one commenter requested clarification as to what academic content assessments means under proposed § 299.19(c)(3).

Discussion: Under proposed § 299.19(c)(3), an SEA's standardized entrance and exit procedures must not include performance on an academic content assessment. Academic content assessments in this context means any academic content assessments, including the statewide assessments in reading/language arts, mathematics, or science used for accountability purposes, as well as other assessments.

The Department continues to believe that while performance on content area assessments may be affected by a student's level of ELP, such assessments are not valid and reliable measures of ELP and, if used to continue a student's status as an English learner, may do so inappropriately (*i.e.,* when a student is proficient in English) and lead to negative academic outcomes for an individual student. We are aware that some SEAs and LEAs have entered into resolution agreements or consent decrees with Federal agencies that contain provisions relating to exit criteria for English learners. We encourage those SEAs and LEAs to contact the Department so that we may, together with the U.S. Department of Justice, assist those SEAs and LEAs with the requirements under both these regulations and the applicable resolution agreement or consent decree.

It would be equally inappropriate use a proficient score on the reading/language arts assessment to exit a student whose ELP assessment results are close to the cut score. The reading/language arts assessment typically does not assess all four domains (reading, writing, listening, and speaking); consequently, using results on such an assessment as part of exit criteria may result in a student exiting who is not able to succeed in a classroom in which listening and speaking in English are crucial skills. Finally, we agree that using the results on content area assessments to help establish cut scores on an ELP assessment may contribute to more meaningful cut scores on the English language proficiency assessment, and we note that the final regulations do not restrict the use of content area assessment results for this purpose.

Changes: None.

Comments: Some commenters expressed support for the requirement in proposed § 299.13(c)(3) that an SEA's standardized exit criteria for English learners must include a score of proficient on the State's ELP assessment as one criterion to exit a student from English learner status. However, one of

these commenters recommended prohibiting SEAs from using the results of the ELP assessment as its sole criterion for determining English learner status. Other commenters opposed § 299.13(c)(3), with some expressing concern that English learners who are also students with disabilities might never be able to exit English learner status and others questioning how a student whose parents opt their children out of all State standardized testing would be able to exit English learner status without an ELP score.

Discussion: We believe that, consistent with the January 7, 2015 Dear Colleague Letter on serving English learners, including those with disabilities, which was jointly signed by the U.S. Department of Justice and OCR, a score of proficient on the State's ELP assessment is critical to ensuring that a student is appropriately exited from English learner status (see *http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf*). Such exit must, at a minimum, be based on a valid and reliable measure that demonstrates sufficient student performance across the required domains in order to consider an English learner to have attained proficiency in English, *i.e.,* a State's ELP assessment. While States have flexibility under the final regulations to use objective criteria related to English language proficiency in addition to a proficient score on the State ELP assessment to determine English learner status, we decline to require the use of multiple criteria.

With respect to a student whose parents may have chosen to opt the student out of all State standardized testing, a high-quality assessment system, including State standardized tests, helps parents, teachers, and other stakeholders to understand and address the needs of individual and groups of students. A State's ELP assessment, along with other indicators of a student's performance and progress at achieving ELP, can focus efforts on areas where students most need support to help ensure their academic success, attainment of a regular high school diploma, and pursuance of postsecondary education or a career of their own choosing.

Changes: None.

McKinney-Vento Education for Homeless Children and Youths (McKinney-Vento) Program

Comments: We received one comment supporting the inclusion of the McKinney-Vento program in the consolidated State plan. We received another comment, submitted with multiple signatories, expressing concern that several key elements of the State plan required in the McKinney-Vento Homeless Assistance Act, as amended by the ESSA, were omitted from the program-specific requirements under § 299.19(c)(5) and recommending the addition of certain requirements to the final regulations. The commenters expressed concern that without the inclusion of these requirements in the consolidated State plan, each SEA may not provide adequate attention to them when implementing the McKinney-Vento Homeless Assistance Act, as amended by the ESSA. The commenters also noted that because the SEA's plan for addressing these critical elements would not be included in the consolidated State plan, stakeholders and the public would not have a formal opportunity to provide comments on them, as required by the consultation requirements in § 299.13.

Discussion: We appreciate the comments supporting the inclusion of the McKinney-Vento program in the consolidated State plan. We note that under § 299.13(c), all SEAs, whether submitting an individual or consolidated State plan, must submit a single set of section 8304(a)(1) assurances, applicable to each program for which the plan or application is submitted, that provides that each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications. These assurances are consistent with the purpose of the consolidated State plan requirements under Section 8302 of the ESEA, as amended by the ESSA, which aims to simplify application requirements and which requires the Secretary to require only descriptions, information, assurances, and other materials that are absolutely necessary for the consideration of the consolidated State plan. The consolidated State plan requirements for the McKinney-Vento program contain those requirements that we have determined are absolutely necessary for the consideration of the consolidated State plan, and we decline to add any additional requirements beyond those that are absolutely necessary. We also note that these areas are covered in depth in the updated non-regulatory guidance the Department released on July 27, 2016, (available at *http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf*).

Changes: None.

Program-Specific Requirements for Title I, Part D

Comments: A number of commenters expressed concern that there was not more specific mention of title I, part D requirements in the NPRM. Several of these commenters expressed a desire for more emphasis in the regulations on transition services for students moving between correctional facilities and locally operated programs, and several commenters requested more focus in the final regulations on how States plan to assess the effectiveness of their title I, part D programs in improving the academic, career, and technical skills of children in the program. Some commenters also requested regulatory changes to provide clear instructions for monitoring. Finally, one commenter asked that the Department define ''at-risk'' in the regulations.

Discussion: We agree with the commenters that title I, part D should be addressed in the consolidated State plan requirements and are adding title I, part D requirements in § 299.19(c)(3). Consistent with Section 8302 of the ESEA, as amended by the ESSA, we are adding only those requirements that we have determined are absolutely necessary for the consideration of the consolidated State plan. Regarding monitoring, the SEA is expected to meet the requirements outlined in title I, part D, and the Department declines to add any additional monitoring requirements. Similarly, section 1432(2) of the ESEA, as amended by the ESSA, already includes a definition of the term ''at-risk.''

Changes: We have revised § 299.19(c)(3) to include title I, part D consolidated State plan requirements.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is significant and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines ''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 is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives such as user fees or marketable permits, to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We have assessed the costs and benefits of this regulatory action. The costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

In assessing the costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits justify the costs.

Discussion of Costs and Benefits

The Department believes that the majority of the changes in these final regulations will not impose significant costs on States, LEAs, or other entities that participate in programs addressed by this regulatory action. Other changes will impose costs, but in many cases they are one-time or initial costs that will not recur, and the Department believes that the benefits resulting from the regulations will exceed the costs by a significant margin. We also note that while the Department received over 20,000 public comments on the proposed regulations, only four commenters addressed the Regulatory Impact Analysis, with one commenter supporting the cost estimates in the NPRM and three commenters asserting that the estimates did not fully reflect the costs of implementation. We believe that this relatively low level of concern about administrative burdens and costs confirms our view, as expressed in the NPRM, that the regulatory framework in these regulations for State accountability systems based on the ESEA, as amended by the ESSA, closely parallels current State systems, which include long-term goals and measurements of interim progress; multiple indicators, including indicators of Academic Achievement, Graduation Rates, and other academic measures selected by the State; annual differentiation of school performance; the identification of low-performing schools; and the implementation of improvement plans for identified schools.

In addition, the final regulations, consistent with the requirements of the ESEA, as amended by the ESSA, provide considerable flexibility to States and LEAs in determining the specific approaches to meeting new requirements, including the rigor of long-term goals and measurements of interim progress, the timeline for meeting those goals, the selection and weighting of indicators of student and school progress, the criteria for identification of schools for improvement, and the development and implementation of improvement plans. This flexibility allows States and LEAs to build on existing measures, systems, and interventions rather than creating new ones, and to determine the most cost-efficient and least burdensome means of meeting proposed regulatory requirements, instead of a standardized set of prescriptive requirements. For all of these reasons, this final cost-benefit analysis generally is consistent with the Department's original estimates.

One commenter asserted that virtually the entire reduced burden in the proposed regulations resulted from statutory rather than regulatory changes, implying that the cost-benefit analysis improperly attributed burden reduction to the regulations. The commenter also asserted that in reducing flexibility for States compared to statutory requirements, the proposed regulations would likely increase costs for States due to the additional administrative burdens of meeting new requirements. In response, we note that, consistent with OMB requirements, our cost-benefit analysis in the final regulations, as in the proposed regulations, takes into account the estimated costs of both statutory and regulatory changes compared to previous statutory and regulatory requirements.

Accordingly, we identify certain statutory changes to the accountability systems and school improvement requirements of the ESEA, as amended by the ESSA, which would result in a significant reduction in costs and administrative burdens for States and LEAs. First, the previous regulations, which are based on the core goal of ensuring 100 percent proficiency in reading and mathematics for all students and all subgroups, potentially result in the identification of the overwhelming majority of participating title I schools for improvement, corrective action, or restructuring. Such an outcome would produce unsustainable demands on State and local capacity to develop, fund, implement, and monitor school improvement plans and related school improvement supports. It was the prospect of this outcome that drove the development of, and rapid voluntary requests for, waivers of certain

accountability and school improvement requirements under ESEA flexibility prior to enactment of the ESSA. The final accountability regulations instead will require, consistent with the requirements of the ESEA, as amended by the ESSA, more flexible, targeted, largely State-determined systems of differentiated accountability and school improvement focused on the lowest-performing schools in each State, including the bottom five percent of title I schools based on the performance of all students, as well as other schools identified for consistently underperforming subgroups. Based on the experience of ESEA flexibility, the Department estimates that States will identify a total of 10,000–15,000 schools for school improvement nationwide—of which the Department estimates 4,000 will be identified for comprehensive support and improvement—compared with as many as 50,000 under the previous regulations in the absence of waivers. While the costs of carrying out required school improvement activities under the previous regulations varied considerably across schools, LEAs, and States depending on a combination of factors, including the stage of improvement and locally selected interventions, it is clear that the final regulations will dramatically decrease potential school improvement burdens for most States and LEAs.

Second, under the final regulations, LEAs will not be required to make available supplemental educational services (SES) to students from low-income families who attend schools identified for improvement. This means that States will not be required to develop and maintain lists of approved SES providers, review provider performance, monitor LEA implementation of SES requirements, or set aside substantial amounts of title I, part A funding for SES. States and LEAs also will no longer be required to report on either student participation or expenditures related to public school choice or SES. While States participating in ESEA flexibility generally already have benefited from waivers of the statutory and regulatory requirements related to public school choice and SES, the final regulations will extend this relief to all States and LEAs without the additional burden of seeking waivers.

Third, the final regulations will eliminate requirements for State identification of LEAs for improvement and the development and implementation of LEA improvement and corrective action plans. As would be the case for schools, the current regulations would require such plans for virtually all participating title I LEAs; the final regulations will not require States to identify any LEAs for improvement.

While most of the elements and requirements of State accountability systems required by the final regulations involve minimal or even significantly reduced costs compared to the requirements of the previous regulations, there are certain proposed changes that could entail additional costs, as described below.

Goals and Indicators

Section 200.13 requires States to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all students and schools for accountability purposes and that consider individual student characteristics (*e.g.,* grade level, English language proficiency level) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner. We estimate that each State will, on average, require 80 hours of staff time to develop the required uniform procedure. Assuming a cost of $40 per hour for State staff, the final regulations will result in a one-time cost, across 50 States, the District of Columbia, and Puerto Rico, of $166,400. We believe that the development of a uniform, statewide procedure will minimize additional costs and administrative burdens at the LEA level, and that any additional modest costs will be outweighed by the benefits of the final regulations, which will allow differentiation of goals for an English learners based on their language and educational backgrounds, thereby recognizing the varied needs of the English learner population. Setting the same long-term goals and measurements of interim progress for all English learners in the State would fail to account for these differences in the English learner population and would result in goals that are inappropriate for at least some students and schools.

Under § 200.14(b)(5), States will be required to develop at least one indicator of School Quality or Student Success that measures such factors as student access to and completion of advanced coursework, postsecondary readiness, school climate and safety, student engagement, educator engagement, or any other measure the State chooses. Section 200.14(c) specifies that measures within School Quality or Student Success indicators must, among other requirements, be valid, reliable, and comparable across all LEAs in the State and support meaningful differentiation of performance among schools. We recognize that the development and implementation of new School Quality or Student Success indicators, which may include the development of instruments to collect and report data on one or more such measures, could impose significant additional costs on a State that elects to develop an entirely new measure. However, the Department also believes, based in part on its experience in reviewing waiver requests under ESEA flexibility, that all States currently collect data on one or more measures that may be suitable as an indicator of School Quality or Student Success consistent with the requirements of § 200.14(b)(5). Consequently, we believe that all, or nearly all, States will choose to adapt a current measure to the purposes of § 200.14(b)(5), rather than developing an entirely new measure, and thus that the final regulations will not impose significant new costs or administrative burdens on States and LEAs.

Participation Rate

Section 200.15(b)(2)(iv) provides flexibility for a State to develop and submit for approval—as part of either a consolidated State plan or a title I, part A State plan—a State-determined action or set of actions for factoring the 95 percent participation rate requirement into its system of annual meaningful differentiation of schools that is sufficiently rigorous to improve a school's assessment participation rate so that it meets the 95 percent participation rate requirement. We note that a State may avoid the administrative burden and cost of developing its own State-determined action, or set of actions, by adopting one or more of the alternative actions provided in § 200.15(b)(2)(i)–(iii). Nevertheless, we estimate that 26 States will take advantage of this flexibility and incur the one-time costs of developing or adopting and submitting for approval to the Department a State-determined action or set of actions for schools that miss the 95 percent participation rate. The Department further estimates that these 26 States would need, on average, 32 hours to develop or adopt and submit for peer review and approval such a State-determined action. At $40 per hour, the average cost per State would be $1,280, resulting in total costs of $33,280 for the estimated 26 States. We expect that States generally would use Federal education funds they reserve for State administration under title I, part A to cover these one-time costs.

In addition, § 200.15(c)(2) requires an LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of students in any subgroup to develop and implement an improvement plan that includes support for school-level plans to improve participation rates that must be developed under § 200.15(c)(1). Section 200.15(c)(2) further requires States to review and approve these LEA plans.

These improvement plan requirements are similar to previous regulations that required States to: Annually review the progress of each LEA in making AYP; identify for improvement any LEA that fails to make AYP for two consecutive years, including any LEA that fails to make AYP as a result of not assessing 95 percent of all students or each subgroup of students; and provide technical assistance and other support related to the development and implementation of LEA improvement plans. Current regulations also require States to take certain corrective actions in LEAs that miss AYP for four or more consecutive years, including LEAs that miss AYP due to not assessing 95 percent of all students or each subgroup of students. As noted previously, the final regulations no longer require annual State review of LEA progress; State identification of LEAs for improvement; or the development, preparation, or implementation of LEA improvement or corrective action plans. This significant reduction in State burden more than offsets the burden in the final regulations related to both the potential one-time cost of developing a State-determined action for schools that miss the 95 percent participation rate and reviewing and approving LEA plans to address low assessment participation rates in their schools. In addition, State discretion to define the threshold for ''a significant number of schools'' that would trigger the requirement for LEA plans related to missing the 95 percent participation rate will provide States a measure of control over the burden of complying with the final regulations. Consequently, the Department believes that the final regulations related to the 95 percent participation rate will not increase costs or administrative burdens significantly for States, as compared to the current regulations. Moreover, we believe that these requirements will have the significant benefit of helping to ensure that the plans include effective interventions that will improve participation in assessments, facilitate transparent information for families and educators on student progress, and assist schools in supporting high-quality instruction and meeting the demonstrated educational needs of all students.

School Improvement Process

The school improvement requirements in the final regulations generally are similar to those required under the current regulations. The previous regulations required identification of schools for multiple improvement categories, State and LEA notification of identified schools, the development and implementation of improvement plans with stakeholder involvement, State support for implementation of improvement plans, LEA provision of public school choice and SES options (the latter of which also imposes significant administrative burdens on States), and more rigorous actions for schools that do not improve over time. In addition, the previous regulations included a prescriptive timeline under which schools that do not improve must advance to the next stage of improvement, typically only after a year or two of implementation at the previous stage (*e.g.,* a school is given only one year for corrective action to prove successful before being identified for restructuring). The previous regulations also generally did not allow for a planning year prior to implementation of the required improvement plans (with the exception of the penultimate restructuring phase). The final regulations, consistent with the statute, provide more flexibility around the timeline for identifying schools (*e.g.,* once every three years for comprehensive support and improvement schools), up to a full year to develop comprehensive support and improvement and targeted support and improvement plans, and more time for full and effective implementation of improvement plans based on State- and LEA-determined timelines for meeting improvement benchmarks. The final regulations also eliminate the public school choice and SES requirements, which impose substantial administrative costs and burdens on LEAs that are not directly related to turning around low-performing schools. We believe that the final regulations will result in a significant reduction in the administrative burdens and costs imposed by key school improvement requirements by the previous regulations.

The final regulations also clarify certain elements of the school improvement process required by the ESEA, as amended by the ESSA, including the needs assessment for schools identified for comprehensive support and improvement, the use of evidence-based interventions in schools identified for both comprehensive support and improvement and targeted support and improvement, and the review of resource inequities required for schools identified for comprehensive support and improvement as well as for schools with low-performing subgroups identified for targeted support and improvement under § 200.19(b)(2). Section 200.21 requires an LEA with such a school to carry out, in partnership with stakeholders, a comprehensive needs assessment that takes into account, at a minimum, the school's performance on all indicators used by the State's accountability system and the reason(s) the school was identified. The final regulations also require the LEA to develop a comprehensive support and improvement plan that is based on the needs assessment and that includes one or more evidence-based interventions. These requirements are similar to the requirements in the previous regulations, under which LEAs with schools identified for improvement must develop improvement plans that include consultation with stakeholders. Thus we believe that the final regulations related to conducting a needs assessment and the use of evidence-based interventions will not increase costs or administrative burdens significantly for LEAs, as compared to the previous statutory and regulatory requirements. Moreover, we believe that these requirements will have the significant benefit of helping to ensure that the required improvement plans include effective interventions that meet the demonstrated educational needs of students in identified schools, and ultimately improve outcomes for those students.

Section 200.21 also requires LEAs with schools identified for comprehensive support and improvement, as well as schools with low-performing subgroups identified for targeted support and improvement that also must receive additional targeted support under § 200.19(b)(2), to identify and address resource inequities, including any disproportionate assignment of ineffective, out-of-field, or inexperienced teachers and possible inequities related to the per-pupil expenditures of Federal, State, and local funds. These requirements involve an additional use of data and methods that LEAs would be required to develop and apply to meet other statutory and regulatory requirements in the final regulations, including requirements related to ensuring that low-income and

minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, the inclusion of per-pupil expenditure data on State and LEA report cards, and the use of per-pupil expenditure data to meet the title I supplement not supplant requirement. In addition, the final regulations do not specify how an LEA must address any resource inequities identified through its review. We believe it is critically important to ensure equitable access to effective teachers, and that the fair and equitable allocation of other educational resources is essential to ensuring that all students, particularly the low-achieving, disadvantaged, and minority students who are the focus of ESEA programs, have equitable access to the full range of courses, instructional materials, educational technology, and programs that help ensure positive educational outcomes.[31] Consequently, we believe that the benefits of the required review of resource inequities outweigh the minimal additional costs that may be imposed by the final regulations.

Section 200.21 establishes a new requirement for State review and approval of each comprehensive support and improvement plan developed by LEAs with one or more schools identified for comprehensive support and improvement, as well as proposed amendments to previously approved plans. This requirement potentially imposes additional costs compared to the previous regulations. One commenter noted that while cost estimates in the NPRM captured a portion of the costs of these plans, the estimates did not recognize other start-up costs, such as preparing for the collection and review of plans and training LEAs on plan requirements, as well as ongoing costs related to monitoring comprehensive support and improvement plans and revising plans when necessary. The commenter further noted that States would likely have to engage both LEAs and schools to ensure the development and implementation of effective improvement plans. The Department agrees that its initial estimates likely understated the average costs that States would incur in creating an application process, training LEA staff, collecting applications, and reviewing and approving comprehensive support and improvement plans for the estimated 4,000 schools that will be identified for comprehensive support and improvement under the final regulations. Consequently, we are increasing the number of hours that we estimate these activities would take, on average, for each identified school from 20 hours to 30 hours, representing the addition of 5 hours for training and 5 hours for administrative processing of each application. Assuming a cost of $40 per hour for State staff, the total estimated State costs related to comprehensive support and improvement plans rises from $3,200,000 in the NPRM to $4,800,000 in these final regulations. States are expected to incur these costs just once over the course of the four-year authorization of the law due to the delayed timeline for identification of the initial cohort of comprehensive support and improvement schools, which under the final regulations will take place at the beginning of the 2018–2019 school year. We also note that this cost represents less than 3 percent of the funds that States are authorized to reserve annually for State-level administrative and school improvement activities under part A of title I of the ESEA, as amended by the ESSA. Given the critical importance of ensuring that LEAs implement rigorous improvement plans in their lowest-performing comprehensive support and improvement schools, and that a significant proportion of the approximately $1 billion that States will reserve annually under section 1003 of the ESEA, as amended by the ESSA, will be used to support effective implementation of these plans, we believe that the potential benefits of a robust State review and approval role will far outweigh the costs. Moreover, those costs would be fully paid for with formula grant funds made available through the ESEA, as amended by the ESSA, including the 1 percent administrative reservation under title I, part A and the 5 percent State-level share of section 1003 school improvement funds.

We further note that the analysis in the NPRM did account for the requirement that the State monitor and periodically review each LEA's implementation of approved comprehensive support and improvement plans. As described in the NRPM, these activities are essentially the same as those carried out under the previous statute and regulations for schools identified for improvement, corrective action, and restructuring, as well as State-level monitoring requirements under the School Improvement Grants program, and thus do not represent new burden or costs for States. In addition, section 1003 of the ESEA, as amended by the ESSA, which requires States to reserve a total of approximately $1 billion annually to support implementation of comprehensive support and improvement and targeted support and improvement plans, permits States to use up to 5 percent of these funds for State-level activities, including ''monitoring and evaluating the use of funds'' by LEAs using section 1003 funds for comprehensive support and improvement plans. For these reasons, we believe that the requirement in the final regulations to monitor and periodically review each LEA's implementation of approved comprehensive support and improvement plans would impose few, if any, additional costs compared to previous regulatory requirements, and that any increased costs would be paid for with Federal funding provided for this purpose.

The final regulations also require States to establish exit criteria for schools implementing comprehensive support and improvement plans and for certain schools with low-performing subgroups identified for targeted support and improvement that also must receive additional targeted support under § 200.19(b)(2) and implement enhanced targeted support and improvement plans. In both cases, the final regulations require that the exit criteria established by the State ensure that a school (1) has improved student outcomes and (2) no longer meets the criteria for identification. Schools that do not meet exit criteria following a State-determined number of years will be identified for additional improvement actions (as outlined by an amended comprehensive support and improvement plan for schools already implementing such plans, and a comprehensive support and improvement plan for schools previously identified for targeted support and improvement due to low-performing subgroups that also receive additional targeted support). We believe that these additional requirements will be minimally burdensome and entail few, if any, additional costs for States. Moreover, most States already have developed similar exit criteria for their priority and focus schools under ESEA flexibility, and likely will be able to adapt existing criteria for use under the final regulations. Rigorous exit criteria linked to additional improvement actions are essential for ensuring that low-performing schools, and, more importantly, the students who attend

[31] See, for example, U.S. Department of Education, Office for Civil Rights Dear Colleague Letter, Resource Comparability, October 1, 2014. *http://www.ed.gov/ocr/letters/colleague-resourcecomp-201410.pdf.*

them, do not continue to underperform for years without meaningful and effective interventions. Moreover, the additional improvement actions primarily involve revision of existing improvement plans, which will be less burdensome than, for example, moving from corrective action to restructuring under current regulations, which requires the creation of an entirely new plan involving significantly different interventions. For these reasons, we believe that the benefits of the final regulations will outweigh the costs.

In addition to requiring States to review and approve comprehensive support and improvement plans, monitor implementation of those plans, and establish exit criteria, the final regulations require States to provide technical assistance and other support to LEAs serving a significant number of schools identified either for comprehensive support and improvement or targeted support and improvement.

Section 200.23 requires each State to periodically review available resources between LEAs and between schools. The final regulations also require each State to take action, to the extent practicable, to address any resource inequities identified during its review. These reviews generally will not require the collection of new data and, in many cases, will involve re-examining information and analyses provided to States by LEAs during the process of reviewing and approving comprehensive support and improvement plans and meeting title I requirements regarding disproportionate assignment of low-income and minority students to ineffective, out-of-field, or inexperienced teachers. In addition, the final regulations give States flexibility to identify the LEAs targeted for resource reviews. Consequently, we believe that the final regulations regarding State resource reviews will be minimally burdensome and entail few if any new costs, while contributing to the development of statewide strategies for addressing resource inequities that can help improve outcomes for students served under ESEA programs.

Similarly, § 200.23(b) of the final regulations requires each State to describe in its State plan the technical assistance it will provide to each of its LEAs serving a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement. The final regulations also specify minimum requirements for such technical assistance, including how the State will assist LEAs in developing and implementing comprehensive support and improvement plans and targeted support and improvement plans, conducting school-level needs assessments, selecting evidence-based interventions, and reviewing and addressing resource inequities. We believe that these requirements related to State-provided technical assistance to certain LEAs will be better differentiated, more reflective of State capacity limits, and significantly less burdensome and costly than previous regulatory requirements related to LEA improvement and corrective action and the operation of statewide systems of support for schools and LEAs identified for improvement. Moreover, given the schools that would be targeted for technical assistance, most costs could be paid for with the State share of funds reserved for school improvement under section 1003 of the ESEA, as amended by the ESSA.

Data Reporting

The ESEA, as amended by the ESSA, expanded reporting requirements for States and LEAs in order to provide parents, practitioners, policy makers, and public officials at the Federal, State, and local levels with actionable data and information on key aspects of our education system and the students served by that system, but in particular those students served by ESEA programs. The final regulations implement these requirements primarily by clarifying definitions and, where possible, streamlining and simplifying reporting requirements consistent with the purposes of the ESEA. Although the regulatory changes in §§ 200.30 through 200.37 involve new requirements that entail additional costs for States and LEAs, we believe the costs are reasonable in view of the potential benefits, which include a more comprehensive picture of the structure and performance of our education system under the new law. Importantly, the ESEA, as amended by the ESSA, gives States and LEAs considerable new flexibility to develop and implement innovative, evidence-based approaches to addressing local educational needs, and the final regulations help ensure that the comprehensive data reporting requirements of the ESEA, as amended by the ESSA, capture the shape and results of that innovation without imposing unreasonable burdens on program participants.

The Department estimates that the new data reporting requirements impose a one-time increased burden of 230 hours per State. Assuming an average cost of $40 an hour for State staff, we estimate a total one-time cost of $478,400 for meeting the new State report card requirements. The Department further estimates that the preparation and dissemination of LEA report cards will require a new one-time average burden of 80 hours per respondent in the first year and annual burden of 10 hours per respondent, resulting in a one-time total burden across 16,970 LEAs of 1,357,600 hours and annual burden of 169,700 hours per LEA.[32] Assuming an average cost of $35 an hour for LEA staff, we estimate the one-time total cost to be $47,516,000 and a total annual cost of $5,939,500. The annual burden on LEAs for creating and publishing their report cards remains unchanged at 16 hours per LEA, posing no additional costs relative to the costs associated with the previous statutory and regulatory requirements. The Department believes these additional costs are reasonable for collecting essential information regarding the students, teachers, schools, and LEAs served through Federal programs authorized by the ESEA, as amended by the ESSA, that currently award more than $23 billion annually to States and LEAs.

A key challenge faced by States in meeting current report card requirements has been developing clear, effective formats for the timely delivery of complex information to a wide range of customers. Sections 200.30 and 200.31 specify requirements intended to promote improvements in this area, including a required overview aimed at ensuring essential information is provided to parents in a manageable, easy-to-understand format; definitions for key elements; dissemination options; accessible formats; and deadlines for publication. We believe the benefits of the final regulations are significant and include transparency, timeliness, and wide accessibility of data to inform educational improvement and accountability.

Section 200.32 streamlines reporting requirements related to State and local accountability systems by permitting States and LEAs to meet those requirements by referencing or obtaining data from other existing documents and descriptions created to meet other requirements in the final regulations. For example, § 200.32 allows States and LEAs to meet the requirement relating to a description of State accountability systems through a link to a Web address, rather than trying to condense a complex, lengthy

[32] 16,790 is, according to NCES data, the total number of operating school districts of all types, except supervisory unions and regional education service agencies; including these types would result in double-counting. We note that the number of LEAs fluctuates annually.

description of a statewide accountability system into an accessible, easy-to-understand ''report card'' format. Section 200.33 clarifies calculations and reporting of data on student achievement and other measures of progress, primarily through modifications to existing measures and calculations. These changes help ensure that State and local report cards serve their intended purpose of providing the public with information on a variety of measures in a State's accountability system that conveys a complete picture of school, LEA, and State performance. The final regulations have a key benefit of requiring all LEA report cards to include results from all State accountability system indicators for all schools served by the LEA to ensure that parents, teachers, and other key stakeholders have access to the information for which schools are held accountable.

A critical new requirement in the ESEA, as amended by the ESSA, is the collection and reporting of per-pupil expenditures. Section 200.35 includes requirements and definitions aimed at helping States and LEAs collect and report reliable, accurate, and comparable data on these expenditures. We believe that these data will be essential in helping districts meet their obligations under the supplement not supplant requirement in title I–A, which requires districts to develop a methodology demonstrating that Federal funds are used to supplement State and local education funding. In addition, making such data widely available has tremendous potential to highlight disparities in resource allocations that can have a significant impact on both the effective use of Federal program funds and educational opportunity and outcomes for the students served by ESEA programs. Broader knowledge and understanding of such disparities among educators, parents, and the public can lead to a more informed conversation about how to improve the performance of our education system, and the ESEA, as amended by the ESSA, highlights the importance of resource allocation considerations by making them a key component of school improvement plans, and ultimately improve educational outcomes.

Section 200.36 provides specifications for the newly required collection of information on student enrollment in postsecondary education, including definitions of key data elements. Sections 200.34 and 200.37 clarify guidelines for calculating graduation rates and reporting on educator qualifications, respectively, and reflect a change to existing reporting requirements in current regulations rather than new items (*e.g.,* requirements related to the reporting of ''highly qualified teachers,'' a term that no longer exists in the ESEA, as amended by the ESSA).

Optional Consolidated State Plans

We believe that the final State plan regulations in §§ 299.13 to 299.19 generally do not impose significant costs on States. As discussed in the *Paperwork Reduction Act of 1995* section of this document, we estimate that, over a three-year period, States will need on average 1,109 additional hours to carry out the requirements in the State plan regulations. At $40 per hour, the average additional State cost associated with these requirements is accordingly an estimated $44,358, resulting in a total cost across 52 States of $2,306,640. We expect that States will generally use the Federal education program funds they reserve for State administration to cover these costs, and that any costs not met with Federal funds will generally be minimal.

Moreover, the final regulations implement statutory provisions expressly intended to reduce burden on States by simplifying the process for applying for Federal education program funds. Section 8302 of the ESEA, as amended by the ESSA, allows States to submit a consolidated State plan in lieu of multiple State plans for individual covered programs. The Department anticipates, based on previous experience, that all States will take advantage of the option in § 299.13 to submit a consolidated State plan, and we believe that the content areas and requirements for those plans in §§ 299.14 to 299.19 are appropriately limited to those needed to ensure that States and their LEAs provide all children significant opportunity to receive a fair, equitable, and high-quality education and close achievement gaps, consistent with the purpose of title I of the ESEA, as amended by the ESSA. As discussed in detail elsewhere in this notice, in these final regulations we have revised certain provisions from proposed §§ 299.14 to 299.19 to ensure a limited burden on States submitting a consolidated State plan, including by eliminating certain proposed requirements and reducing the amount of information that a State must provide under other requirements.

Section 8302(a)(1) of the ESEA, as amended by the ESSA, permits the Department to designate programs for inclusion in consolidated State plans in addition to those covered by the statute. In § 299.13, the Department has added to the covered programs the Grants for State Assessments and Related Activities in section 1201 of title I, part B of the ESEA, as amended by the ESSA, and the Education for Homeless Children and Youths program in subpart B of title VII of the McKinney-Vento Homeless Assistance Act. Inclusion of these programs in a consolidated State plan will further reduce the burden on States in applying for Federal education program funds.

In general, the Department believes that the costs of the final State plan regulations (which are discussed in more detail in the following paragraphs) are clearly outweighed by their benefits, which include, in addition to reduced burden on States: Increased flexibility in State planning, improved stakeholder engagement in plan development and implementation, better coordination in the use of Federal education program funds and elimination of funding ''silos,'' and a sustained focus on activities critical to providing all students with equitable access to a high-quality education.

Section 299.13 establishes the procedures and timelines for State plan submission and revision, including requirements for timely and meaningful consultation with stakeholders that are based on requirements in titles I, II, and III of the ESEA, as amended by the ESSA. The Department does not believe that the consultation requirements impose significant costs on States. We expect that, as part of carrying out their general education responsibilities, States will have already developed procedures for notifying the public and for conducting outreach to, and soliciting input from, stakeholders, as the regulations require. In the Department's estimation, States will not incur significant costs in implementing those procedures for the State plans.

Sections 299.14 to 299.19 establish requirements for the content of consolidated State plans (*i.e.,* the ''necessary materials'' discussed in section 8302(b)(3) of the ESEA, as amended by the ESSA). Section 299.14 establishes five content areas of consolidated State plans, including: Consultation and performance management (the requirements for which are specified in § 299.15); challenging academic assessments (§ 299.16); accountability, support, and improvement for schools (§ 299.17); supporting excellent educators (§ 299.18); and supporting all students (§ 299.19). We believe that, in general, the requirements for these content areas minimize burden on States insofar as they consolidate duplicative requirements and eliminate unnecessary

requirements from State plans for individual covered programs.

Section 299.15 requires States to describe how they engaged in timely and meaningful consultation with specified stakeholder groups in consolidated State plan development. We estimate that the costs of complying with the requirements in this section are minimal.

Section 299.16 requires States to describe how they are complying with requirements related to assessments in languages other than English, consistent with section 1111(b)(2)(F) of the ESEA, as amended by the ESSA. In addition, for a State that exempts an eighth-grade student from taking the mathematics assessment the State typically administers in eighth grade because the student takes an end-of-course mathematics assessment that is used by the State to meet high school assessment requirements, § 299.16 requires the State to describe how the State is complying with the requirements of section 1111(b)(2)(c) of the ESEA, as amended by the ESSA, and applicable regulations. The Department believes that the costs to States of complying with these requirements are likewise minimal.

The Department believes that the requirements in §§ 299.17 and 299.18 similarly do not involve significant new costs for most States. Section 299.17 establishes consolidated State plan requirements for describing the State's long-term goals, statewide accountability system, school identifications, and support for low-performing schools, consistent with the requirements in section 1111(c) and (d) of the ESEA, as amended by the ESSA. Section 299.18 requires a State to describe, consistent with requirements in sections 1111(g), 2101, and 2102 of the ESEA, as amended by the ESSA: Educator development, retention, and advancement practices in the State, if the State intends to use Federal education program funds to support such practices; how the State will use Federal education program funds for State-level activities to improve educator quality and effectiveness; and whether low-income and minority students in title I-participating schools are taught at higher rates by ineffective, out-of-field, or inexperienced teachers compared to their peers, including the likely causes of any differences in rates and strategies to eliminate those differences. The Department anticipates that, in complying with §§ 299.17 and 299.18, States will rely to a significant degree on existing State ESEA flexibility requests and Educator Equity Plans. Accordingly, the final regulations should generally not result in significant new costs for States.

Finally, § 299.19 requires States to describe how they will use Federal education program funds to provide all students equitable access to a well-rounded and supportive education, and includes program-specific requirements necessary to ensure that such access is provided to particularly vulnerable student groups, including migratory students, neglected and delinquent children and youths, English learners, and homeless children and youths. We believe that the requirements in this section would accomplish this purpose with minimal burden on, and cost to, States, consistent with section 8302(b)(3) of the ESEA, as amended by the ESSA.

The major benefit of these regulations, taken in their totality, is a more flexible, less complex, and costly accountability framework for the implementation of the ESEA that respects State and local decision-making while continuing to ensure that States and LEAs use ESEA funds to ensure that all students have significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized costs and benefits as a result of the final regulations. The transfers reflect appropriations for the affected programs. We note that the regulatory baselines differ within the table; the cost estimates are increments over and above what would be spent under the ESEA if it had not been amended by the ESSA, whereas the transfers (appropriations) are totals, rather than increments relative to the ESEA. We further note that, although we refer to appropriations amounts as transfers, where they pay for new activities they would appropriately be categorized as costs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Benefits
More flexible and less complex and costly accountability framework with uniform procedures	Not Quantified.
More transparency and actionable data and information with uniform definitions, all of which provide a more comprehensive picture of performance and other key measures.	Not Quantified.
Less burden on States through simplified process for applying and planning for Federal education program funds.	Not Quantified
Category	Costs (over 4-year authorization).
Uniform procedure for setting long-term goals and measurements of interim progress for English learners.	$166,400.
Review and approval of LEA comprehensive support and improvement plans	4,800,000.
State Report Cards	478,400.
LEA Report Cards	65,334,500.
Consolidated State Plans	2,306,640.
Category	Transfers (over 4-year authorization; based on FY 2016 appropriations).
Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies	59,639,208,000.
Title I, part B: Grants for State Assessments	1,512,000,000.
Title I, part C: Education of Migratory Children	1,499,004,000.
Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.	190,456,000.
Title II, part A: Supporting Effective Instruction	9,399,320,000.
Title III, part A: Language Instruction for English Learners and Immigrant Students	2,949,600,000.
Title IV, part A: Student Support and Academic Enrichment Grants	6,450,000,000 (no FY 2016 funding; reflects authorization of appropriations).

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES—Continued

Category	Benefits
Title IV, part B: 21st Century Community Learning Centers	4,666,692,000.
Title V, part B, subpart 2: Rural and Low-Income School Program	351,680,000.
Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.	280,000,000.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), an agency must assess the effects of its regulatory actions on State, local, and tribal governments. The Department has set forth that assessment in the *Regulatory Impact Analysis* section of this document. Section 1532 of the UMRA also requires that an agency provide a written statement regarding any regulation that would involve a Federal mandate. These final regulations do not involve a Federal mandate as defined in section 658 of UMRA because the duties imposed upon State, local, or tribal governments in these regulations are a condition of those governments' receipt of Federal formula grant funds under the ESEA.

Regulatory Flexibility Act Certification

The Secretary certifies that these final requirements would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs that receive ESEA funds qualify as small entities under this definition, the requirements established in this document would not have a significant economic impact on these small LEAs because the costs of implementing these requirements would be covered by funding received by these small LEAs under ESEA formula grant programs, including programs that provide funds largely for such small LEAs (*e.g.,* the Rural and Low-Income School program authorized under subpart 2 of part B of title V). The Department believes the benefits provided under this final regulatory action outweigh the burdens on these small LEAs of complying with the final requirements. However, one commenter disagreed that that the final regulations would not have significant economic impact on small entities. This commenter specifically cited the requirement for assessment rate improvement plans in § 200.15(c)(1) for schools that do not meet the 95 percent participation rate requirement, claiming that such plans may be costly to develop and implement while acknowledging that Federal program funds are available to pay such costs. In addition to the fact that Federal funds may be used to pay any costs associated with assessment rate improvement plans, we note that such costs typically would be commensurate with the size and enrollment of an LEA, and thus reasonably would be expected to be lower for small entities. Further, the costs and other burdens associated with assessment rate improvement plans are likely to be significantly lower than the costs of Federal or State compliance remedies that otherwise could be required for small LEAs that do not meet the 95 percent participation rate requirements in section 1111(c)(4)(E) of the ESEA, as amended by the ESSA. Consequently, the final requirements, including § 200.15, would help ensure that State plans for using ESEA formula grant funds, as well as State-provided technical assistance and other support intended to promote the effective and coordinated use of Federal, State, and local resources in ensuring that all students meet challenging State standards and graduate high school college- and career-ready, reflect the unique needs and circumstances of small LEAs and ensure the provision of educational resources that otherwise may not be available to small and often geographically isolated LEAs.

Paperwork Reduction Act of 1995

Sections 200.21, 200.22, 200.24, 200.30, 200.31, 200.32, 200.33, 200.34, 200.35, 200.36, 200.37, 299.13, 299.14, 299.15, 299.16, 299.17, 299.18, and 299.19 of the final regulations contain information collection requirements that will impact the burden and costs associated with two currently approved information collections, 1810–0581 and 1810–0576. Under the Paperwork Reduction Act of 1995 (PRA) the Department submitted a copy of these sections to OMB for its review.

These changes were described in the NPRM and subject to comments at that time. One commenter acknowledged that the proposed regulations affected the information collections, and agreed that the proposed regulations would reduce some existing burden. A second commenter indicated that the burden estimates were too low, but did not provide specific suggestions for improving the estimates. We continue to believe these burden hour estimates to be accurate, and in the absence of specific feedback, decline to make changes. Another commenter specifically noted that the estimated reporting burden of 230 hours for State report cards was too low. We agree with this commenter that the burden on States for preparing report cards is higher than 230 hours. When describing the burden hours in the NPRM, we described these hours in relation to the current approved burden under the relevant information collections, and we estimated an increase of 230 burden hours, in addition to the already approved burden hours. For clarity, we describe the total estimated burden below.

Collection of Information From SEAs—Report Cards; Collection of Information From LEAs—Report Cards and Public Reporting

Section 1111(h) of the ESEA, as amended by the ESSA, requires States and LEAs to prepare and disseminate annual report cards; these report cards provide essential information to school communities regarding activities under title I of the ESEA. Sections 200.30–200.37 of the final regulations further require States and LEAs to include specific elements on the report cards. These information collection requirements will impact the burden and costs associated with information collection 1810–0581, *State Educational Agency, Local Educational Agency, and School Data Collection and Reporting Under ESEA, Title I, Part A,* under which the Department is approved to require States and LEAs to collect and disseminate information. The estimated burden for this collection remains unchanged from the NPRM.

Under §§ 200.30 through 200.37, States are required to annually prepare and disseminate a State report card, including specific elements. Among other things, each State must describe its accountability system in the report card, create and publish a report card overview, and ensure that the report

cards are accessible. To ensure that States can report on all required elements, States will be required to adjust their data systems, and some States may need to submit a plan requesting an extension of the deadline to include certain date elements.

On an annual basis, we continue to estimate that each State will devote 370 hours to preparing and disseminating the State report card, and making it accessible; across all States, this will result in an annual burden of 19,240 hours. We anticipate that each State will devote 80 hours to creating and preparing a State report card overview, one time. During the three-year information collection period, this will result in an annual burden of 26.67 hours for each State; across all States, this will result in an annual burden of 1,387 hours. We expect that 15 States may need to request an extension to report certain required data elements on behalf of the State or its LEAs, and that such request will take 50 hours to prepare. Over the three-year information collection period, this will result in an annual burden of 16.66 hours for each affected State, resulting in an annual burden of 250 hours across all States. Each State must annually include a description of its accountability system in the report card; we anticipate that this will result in an annual burden of 10 hours for each State, resulting in an annual burden of 520 hours across all States. Finally, we anticipate that each State will have to make a one-time adjustment to its data collection system, to report on required data elements under §§ 200.32 through 200.37. We expect that this adjustment will require 120 hours for each State; over the three-year information collection period, this will result in an annual burden of 40 hours, and a total burden for all States of 2080 hours.

ANNUAL COLLECTION OF INFORMATION FROM SEAS: REPORT CARDS

Citation	Description	Respondents	Average hours per respondent	Total hours	Total cost (total hours × $40)
Section 1111(h)(1); § 200.24(e); § 200.30.	Prepare and disseminate the State report card, and make it accessible. This includes posting the report card on the Web site alongside the annual report to the Secretary required in § 200.30(d)(ii)(B). Except as described below, this includes all requirements under section 1111(h) of the ESEA and all pre-existing requirements..	52	370	19,240	$769,600
§ 200.30(b)(2)	Create and publish a State report card overview.	52	26.67	1,386.67	55,467
§§ 200.30(e)(3); 200.31(e)(3)	Request an extension	15	16.67	250	10,000
§§ 200.32(a); 200.32(b)	Describe the accountability system in the report card.	52	10.00	520	20,800
§§ 200.32(c); 200.33; 200.34; 200.35; 200.36; 200.37.	Describe the accountability system results in the report card, and adjust the data system to report on all of the elements required under these sections of the regulations.	52	40.00	2,080	83,200
Total				23,476.67	939,067

Similarly, we have not adjusted the estimated burden arising from the development and release of the LEA report card, or the estimated burden for LEAs with schools identified for comprehensive or targeted support and improvement to notify parents of the identification, or make publicly available plans for improvement. We continue to estimate that each LEA, on average, will devote 30 hours across the three-year information collection period, or 10 hours annually, to notifying parents that schools have been identified, and to make publically available the resulting plans. In total, for 16,970 LEAs, this results in an annual burden of 169,700 hours. We expect that each LEA will devote 16 hours to preparing and disseminating the LEA report card each year, for a total burden of 271,520 hours across all LEAs. We anticipate that each LEA will devote 80 hours to creating and preparing an LEA report card overview, one time. During the three-year information collection period, this will result in an annual burden of 26.67 hours for each LEA; across all LEAs, this will result in an annual burden of 452,533 hours. Finally, all LEAs will be required to revise their report cards to report on new elements required under the ESEA, as amended by the ESSA, as well as the regulations in §§ 200.30 through 200.37. However, we expect that these adjustments will be addressed through modifications to the State data collection systems, and therefore do not expect these changes to impose additional burden hours on LEAs.

ANNUAL COLLECTION OF INFORMATION FROM LEAS: REPORT CARDS AND PUBLIC REPORTING

Citation	Description	Respondents	Average hours per respondent	Total hours	Total cost (total hours × $35)
§§ 200.21(b); 200.21(d)(6); 200.22(b); 200.22(d)(2).	LEAs with schools identified for comprehensive or targeted support and improvement must make publicly available the resulting plans and any amendments to these plans, and notify parents of the identification.	16,970	10	169,700	$5,939,500
Section 1111(h)(2); § 200.31	Prepare and disseminate the LEA report card, and make it accessible. Except as described below, this includes all requirements under section 1111(h) of the ESEA and all pre-existing requirements.	16,970	16	271,520	9,503,200
§ 200.31(b)(2)	Create and publish the LEA report card overview.	16,970	26.67	452,533	15,838,667
§§ 200.32; 200.33; 200.34; 200.35; 200.36; 200.37.	Describe the accountability system and results on the LEA report card.	16,970	0	0	0
Total				893,753.33	31,281,367

Consolidated State Application

Under information collection 1810–0576, *Consolidated State Application,* the Department is currently approved to collect information from States. As proposed in the NPRM, we will replace the previously authorized consolidated State application with the consolidated State plan, authorized under section 8302 of the ESEA, as amended by the ESSA. The consolidated State plan seeks to encourage greater cross-program coordination, planning, and service delivery; enhance program integration; and provide greater flexibility, and reduce burden, for States. We will use the information from the consolidated State plan as the basis for approving funding under the covered programs.

Section 299.13 permits a State to submit a consolidated State plan, instead of individual program applications. States may choose not to submit consolidated State plans; however, for purposes of estimating the burden, we assume all States will choose to submit consolidated State plans. Each consolidated State plan must meet the requirements described in §§ 299.14 to 299.19. In the NPRM, we estimated the total annual burden for the collection of information through the submission of consolidated State plans to be 23,200 hours. Based upon revisions to the requirements of the consolidated State plan, and efforts to reduce burden on States, we now revise the estimates as detailed below.

Each State submitting a consolidated State plan will be required to describe consultation with stakeholders; provide assurances; report on performance management and technical assistance; describe how the State is complying with requirements relating to assessments in languages other than English; report on accountability, support, and improvement for schools; report on supporting excellent educators; and report on equitable access and support for schools. In total, over the three-year information collection period, we anticipate that each State will devote 993 hours to the preparation and submission of these plans, resulting in a total annual burden of 17,212 hours.

Additionally, we estimate that each State, on average, will amend its request once during the three-year information collection period, and will devote 60 hours to preparing this amendment. This amendment process will result in a total annual burden of 1,040 hours, across all States.

We further expect that 16 States will submit plans to apply for extensions for the required educator equity student-level data calculation, and that each State submitting a plan and extension request will devote 60 hours to this process. Over the three-year information collection period, we expect that this will result in an annual burden of 20 hours for 16 States, or 320 total burden hours.

Finally, certain States will be required to describe their strategies for middle school math equity. We estimate that 26 States will be required to address these strategies, and will devote 75 hours to describing these strategies in the State plan. Over the three-year information collection period, we expect that this will result in an annual burden of 25 hours for 25 States, or 650 total burden hours.

ANNUAL COLLECTION OF INFORMATION FROM SEAS: CONSOLIDATED STATE PLAN

Citation	Description	Respondents	Hours per respondent	Total hours	Total cost (total hours × $40)
§§ 299.13(a); 299.13(d)(2); 299.13(e); 299.13(h); 299.13(k).	Submit consolidated State plan or individual program State plans; submit optional revisions to State plans.	52	10	520	20,800

ANNUAL COLLECTION OF INFORMATION FROM SEAs: CONSOLIDATED STATE PLAN—Continued

Citation	Description	Respondents	Hours per respondent	Total hours	Total cost (total hours × $40)
§§ 299.13(a); 299.13(b); 299.14(b); 299.15(a).	Report on meaningful consultation with stakeholders, including public comment.	52	40	2080	83,200
§§ 299.13(a); 299.13(c); 299.13(d)(1); 299.14(c).	Provide assurances	52	1	52	2,080
§§ 299.13(a); 299.13(g)	Submit amendments and significant changes, as well as revisions, as appropriate.	52	20	1040	41,600
§§ 299.13(a); 299.13(d)(3)	Submit a plan to apply for an extension for the educator equity student-level data calculation.	16	20	320	12,800
§ 299.13(f)	Publish approved consolidated State plan or individual program State plans on State website.	52	5	260	10,400
§§ 299.13(a); 299.13(d)(2); 299.15(b)	Report on performance management and technical assistance.	52	50	2600	104,000
§§ 299.13(a); 299.16(a)	Describe strategies for middle school math equity.	26	25	650	26,000
§§ 299.13(a); 299.16(b)	Describe how the State is complying with the requirements related to assessments in languages other than English.	52	25	1300	52,000
§§ 299.13(a); 299.14(b(3); 299.17	Report on accountability support and improvement for schools.	52	150	7800	312,000
§§ 299.13(a); 299.14(b)(4); 299.18	Report on supporting excellent educators.	52	25	1300	52,000
§§ 299.13(a); 299.14(b)(5); 299.19	Report on equitable access and support for students.	52	25	1300	52,000
Total				19222	768,880

The PRA does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected section of the regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, or electronic format) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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List of Subjects

34 CFR Part 200

Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 299

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: November 16, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 200 and 299 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6376, unless otherwise noted.

§ 200.7 [Removed and Reserved]

■ 2. Remove and reserve § 200.7.

■ 3. Section 200.12 is revised to read as follows:

§ 200.12 Single statewide accountability system.

(a)(1) Each State must describe in its State plan under section 1111 of the Act that the State has developed and will implement a single, statewide accountability system that meets all requirements under paragraph (b) of this section in order to improve student academic achievement and school success among all public elementary and secondary schools, including public charter schools.

(2) A State that submits an individual program State plan for subpart A of this part under § 299.13(j) must meet all application requirements in § 299.17.

(b) The State's accountability system must—

(1) Be based on the challenging State academic standards under section 1111(b)(1) of the Act and academic assessments under section 1111(b)(2) of the Act;

(2) Be informed by the State's ambitious long-term goals and measurements of interim progress under § 200.13;

(3) Include all indicators under § 200.14;

(4) Take into account the achievement of all public elementary and secondary school students, consistent with §§ 200.15 through 200.17 and 200.20;

(5) Be the same accountability system the State uses to annually meaningfully differentiate all public schools, including public charter schools, in the State under § 200.18, and to identify schools for comprehensive and targeted support and improvement under § 200.19; and

(6) Include the process the State will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all public schools, including public charter schools, accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24.

(c)(1) The accountability provisions under this section must be overseen for public charter schools in accordance with State charter school law.

(2) In meeting the requirements of this section, if an authorized public chartering agency, consistent with State charter school law, acts to decline to renew or to revoke a charter for a particular charter school, the decision of the agency to do so supersedes any notification from the State that such a school must implement a comprehensive support and improvement plan or targeted support and improvement plan under §§ 200.21 or 200.22, respectively.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 4. Remove the undesignated center heading ''Adequate Yearly Progress (AYP)'' following § 200.12.

■ 5. Section 200.13 is revised to read as follows:

§ 200.13 Long-term goals and measurements of interim progress.

In designing its statewide accountability system under § 200.12, each State must establish long-term goals and measurements of interim progress that use the same multi-year timeline to achieve those goals for all students and for each subgroup of students, except that goals for Progress in Achieving English language proficiency must only be established for the English learner subgroup. The long-term goals and measurements of interim progress must include, at a minimum, each of the following:

(a) *Academic achievement.* (1) Each State must, in its State plan under section 1111 of the Act—

(i) Identify its ambitious State-designed long-term goals and measurements of interim progress for improved academic achievement, as measured by the percentage of students attaining grade-level proficiency on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act, for all students and separately for each subgroup of students described in § 200.16(a)(2); and

(ii) Describe how it established those goals and measurements of interim progress.

(2) In establishing the long-term goals and measurements of interim progress under paragraph (a)(1) of this section, a State must—

(i) Apply the same academic achievement standards consistent with section 1111(b)(1) of the Act to all public school students in the State, except as provided for students with the most significant cognitive disabilities, whose performance under subpart A of this part may be assessed against alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the Act;

(ii) Measure achievement separately for reading/language arts and for mathematics; and

(iii) Take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide proficiency gaps, such that the State's measurements of interim progress require greater rates of improvement for subgroups of students that are lower-achieving.

(b) *Graduation rates.* (1) Each State must, in its State plan under section 1111 of the Act—

(i) Identify its ambitious State-designed long-term goals and measurements of interim progress for improved graduation rates for all students and separately for each subgroup of students described in § 200.16(a)(2); and

(ii) Describe how it established those goals and measurements of interim progress.

(2) A State's long-term goals and measurements of interim progress under paragraph (b)(1) of this section must be based on—

(i) The four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) If a State chooses to use an extended-year adjusted cohort graduation rate as part of its Graduation Rate indicator under § 200.14(b)(3), the extended-year adjusted cohort graduation rate consistent with § 200.34(d), except that a State must set more rigorous long-term goals and measurements of interim progress for each such graduation rate, as compared to the long-term goals and measurements of interim progress for the four-year adjusted cohort graduation rate.

(3) In establishing the long-term goals and measurements of interim progress under paragraph (b)(1) of this section, a State must take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide graduation rate gaps, such that a State's measurements of interim progress require greater rates of improvement for subgroups that graduate high school at lower rates.

(c) *English language proficiency.* (1) Each State must, in its State plan under section 1111 of the Act—

(i) Identify its ambitious State-designed long-term goals and measurements of interim progress for increases in the percentage of all English learners in the State making annual progress toward attaining English language proficiency, as measured by the English language proficiency assessment required in section 1111(b)(2)(G) of the Act; and

(ii) Describe how it established those goals and measurements of interim progress.

(2) Each State must describe in its State plan under section 1111 of the Act a uniform procedure, applied to all English learners in the State in a

consistent manner, to establish research-based student-level targets on which the goals and measurements of interim progress under paragraph (c)(1) of this section are based. The State-developed uniform procedure must—

(i) Take into consideration, at the time of a student's identification as an English learner, the student's English language proficiency level, and may take into consideration, at a State's discretion, one or more of the following student characteristics:

(A) Time in language instruction educational programs.

(B) Grade level.

(C) Age.

(D) Native language proficiency level.

(E) Limited or interrupted formal education, if any;

(ii) Based on the selected student characteristics under paragraph (c)(2)(i) of this section, determine the applicable timeline, up to a State-determined maximum number of years, for English learners sharing particular characteristics under paragraph (c)(2)(i) of this section to attain English language proficiency after a student's identification as an English learner; and

(iii) Establish student-level targets, based on the applicable timelines under paragraph (c)(2)(ii) of this section, that set the expectation for all English learners to make annual progress toward attaining English language proficiency within the applicable timelines for such students.

(3) The description under paragraph (c)(2) of this section must include a rationale for how the State determined the overall maximum number of years for English learners to attain English language proficiency in its uniform procedure for setting research-based student-level targets, and the applicable timelines over which English learners sharing particular characteristics under paragraph (c)(2)(i) of this section would be expected to attain English language proficiency within such State-determined maximum number of years.

(4) An English learner who does not attain English language proficiency within the timeline under paragraph (c)(2)(ii) of this section must not be exited from English learner services or status prior to attaining English language proficiency.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 6. Section 200.14 is revised to read as follows:

§ 200.14 Accountability indicators.

(a) In its statewide accountability system under § 200.12, each State must, at a minimum, include four distinct indicators for each school that—

(1) Except for the indicator under paragraph (b)(4) of this section, measure performance for all students and separately for each subgroup of students described in § 200.16(a)(2); and

(2) Use the same measures within each indicator for all schools in the State, except as provided in paragraph (c)(2) of this section.

(b) A State must annually measure the following indicators consistent with paragraph (a) of this section:

(1) For all schools, based on the long-term goals established under § 200.13(a), an Academic Achievement indicator, which—

(i) Must include the following:

(A) A measure of student performance on the annual reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act at the proficient level on the State's grade-level academic achievement standards consistent with section 1111(b)(1) of the Act, except that students with the most significant cognitive disabilities may be assessed in those subjects against alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the Act; and

(B) The performance of at least 95 percent of all students and 95 percent of all students in each subgroup consistent with § 200.15(b)(1); and

(ii) May include the following:

(A) In addition to a measure of student performance under paragraph (b)(2)(i)(A) of this section, measures of student performance on such assessments above or below the proficient level on such achievement standards so long as—

(*1*) A school receives less credit for the performance of a student who is not yet proficient than for the performance of a student who has reached or exceeded proficiency; and

(*2*) The credit the school receives from the performance of a student exceeding the proficient level does not fully compensate for the performance of a student who is not yet proficient in the school; and

(B) For high schools, student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(2) For elementary and secondary schools that are not high schools, an Academic Progress indicator, which must include either—

(i) A measure of student growth based on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act; or

(ii) Another academic measure that meets the requirements of paragraph (c) of this section.

(3) For high schools, based on the long-term goals established under § 200.13(b), a Graduation Rate indicator, which—

(i) Must measure the four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) May measure, at the State's discretion, the extended-year adjusted cohort graduation rate consistent with § 200.34(d).

(4) For all schools, a Progress in Achieving English Language Proficiency indicator, based on English learner performance on the annual English language proficiency assessment required under section 1111(b)(2)(G) of the Act in at least each of grades 3 through 8 and in grades for which English learners are otherwise assessed under section 1111(b)(2)(B)(v)(I)(bb) of the Act, that—

(i) Uses objective and valid measures of student progress on the assessment, comparing results from the current school year to results from the previous school year, such as student growth percentiles;

(ii) Is aligned with the applicable timelines, within the State-determined maximum number of years, under § 200.13(c)(2) for each English learner to attain English language proficiency after the student's identification as an English learner; and

(iii) May also include a measure of proficiency (*e.g.,* an increase in the percentage of English learners scoring proficient on the English language proficiency assessment required under section 1111(b)(2)(G) of the Act compared to the prior year).

(5) One or more indicators of School Quality or Student Success that meets the requirements of paragraph (c) of this section, which may vary by each grade span and may include one or more of the following:

(i) Student access to and completion of advanced coursework.

(ii) Postsecondary readiness.

(iii) School climate and safety.

(iv) Student engagement.

(v) Educator engagement.

(vi) Any other indicator the State chooses that meets the requirements of paragraph (c) of this section.

(c) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within any indicator under this section—

(1) Is valid, reliable, and comparable across all LEAs in the State;

(2) Is calculated in the same way for all schools across the State, except that

measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade span; and

(3) For all indicators except the Progress in Achieving English Language Proficiency indicator, is able to be disaggregated for each subgroup of students described in § 200.16(a)(2).

(d) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success is supported by research that high performance or improvement on such measure is likely to increase student learning (*e.g.,* grade point average, credit accumulation, performance in advanced coursework), or, for a measure within indicators at the high school level, graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.

(e) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success aids in the meaningful differentiation of schools under § 200.18 by demonstrating varied results across schools in the State.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 7. Section 200.15 is revised to read as follows:

§ 200.15 Participation in assessments and annual measurement of achievement.

(a)(1) To meet the requirements for academic assessments under section 1111(b)(2) of the Act, each State must administer the academic assessments required under section 1111(b)(2)(B)(v) of the Act to all public elementary school and secondary school students in the State and provide for the participation of all such students in those assessments.

(2) For purposes of the statewide accountability system under section 1111(c) of the Act, each State must annually measure the achievement of at least 95 percent of all students, and 95 percent of all students in each subgroup of students described in § 200.16(a)(2), who are enrolled in each public school on the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(3) Each State must measure participation rates under paragraph (a)(2) of this section separately in reading/language arts and mathematics.

(b) For purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must—

(1) Annually calculate any measure in the Academic Achievement indicator under § 200.14(b)(1) so that the denominator of such measure, for all students and for all students in each subgroup, includes the greater of—

(i) 95 percent of all such students in the grades assessed who are enrolled in the school; or

(ii) The number of all such students enrolled in the school who participated in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act; and

(2) Factor the requirement for 95 percent student participation in assessments under paragraph (a)(2) of this section into its system of annual meaningful differentiation so that missing such requirement, for all students or for any subgroup of students in a school, results in at least one of the following actions:

(i) A lower summative determination in the State's system of annual meaningful differentiation under § 200.18(a)(4).

(ii) The lowest performance level on the Academic Achievement indicator in the State's system of annual meaningful differentiation under § 200.18(a)(2).

(iii) Identification for, and implementation of, a targeted support and improvement plan consistent with the requirements under § 200.22.

(iv) Another State-determined action or set of actions described in its State plan under section 1111 of the Act that is sufficiently rigorous to improve the school's participation rate so that the school meets the requirements under paragraph (a) of this section.

(c) To support the State in meeting the requirements of paragraph (a) of this section—

(1) A school that fails to assess at least 95 percent of all students or 95 percent of each subgroup of students in any year must develop and implement an improvement plan that—

(i) Is developed in partnership with stakeholders (including principals and other school leaders; teachers; and parents and, as appropriate, students);

(ii) Includes one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years;

(iii) Is reviewed and approved by the LEA prior to implementation; and

(iv) Is monitored, upon submission and implementation, by the LEA; and

(2) An LEA with a significant number or percentage of schools that fail to assess at least 95 percent of all students or 95 percent of each subgroup of students in any year must develop and implement an improvement plan that includes additional actions to support effective implementation of the school-level plans developed under paragraph (c)(1) of this section and that is reviewed and approved by the State.

(3) If a State chooses to identify a school for, and require implementation of, a targeted support and improvement plan under paragraph (b)(2)(iii) of this section, the requirement for such a school to develop and implement a targeted support and improvement plan consistent with § 200.22 fulfills the requirements of this paragraph.

(d)(1) A State must provide a clear and understandable explanation of how it has met the requirements of paragraph (b) of this section in its State plan under section 1111 of the Act and in its description of the State's system for annual meaningful differentiation of schools on its State report card pursuant to section 1111(h)(1)(C)(i)(IV) of the Act.

(2) A State, LEA, or school may not systematically exclude students, including any subgroup of students described in § 200.16(a), from participating in the assessments required under section 1111(b)(2)(B)(v) of the Act.

(3) To count a student who is assessed based on alternate academic achievement standards described in section 1111(b)(1)(E) of the Act as a participant for purposes of meeting the requirements of this section, the State must have guidelines that meet the requirements described in section 1111(b)(2)(D)(ii) of the Act and must ensure that its LEAs adhere to such guidelines.

(4) Consistent with § 200.16(c)(3)(i)(A), a State may count a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act as a participant in the State assessment in reading/language arts for purposes of meeting the requirements in paragraph (a) of this section if he or she takes either the State's English language proficiency assessment under section 1111(b)(2)(G) of the Act or reading/language arts assessment under section 1111(b)(2)(B)(v)(I) of the Act.

(Authority: 20 U.S.C. 6311(b)–(c); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 8. Section 200.16 is revised to read as follows:

§ 200.16 Subgroups of students.

(a) *In general.* In establishing long-term goals and measurements of interim progress under § 200.13, measuring performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18,

and identifying schools under § 200.19, each State must include the following categories of students consistent with the State's minimum number of students under § 200.17(a)(1):

(1) All public school students.

(2) Each of the following subgroups of students, separately:

(i) Economically disadvantaged students.

(ii) Students from each major racial and ethnic group.

(iii) Children with disabilities, as defined in section 8101(4) of the Act.

(iv) English learners, as defined in section 8101(20) of the Act.

(b) *Children with disabilities.* With respect to a student previously identified as a child with a disability who has exited special education services as determined by the student's individualized education program (IEP) team, a State may include such a student's performance within the children with disabilities subgroup under paragraph (a)(2)(iii) of this section for not more than two years after the student ceases to be identified as a child with a disability (*i.e.,* the two school years following the year in which the student exits special education services) for purposes of calculating any indicator under § 200.14(b) that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the Act, provided that the State develops a uniform statewide procedure for doing so that includes all such students and includes them—

(1) For the same State-determined period of time; and

(2) For purposes of determining if a school meets the State's minimum number of students under § 200.17(a)(1) for the children with disabilities subgroup when calculating performance on any such indicator.

(c) *English learners.* (1) With respect to a student previously identified as an English learner who has achieved English language proficiency consistent with the standardized, statewide exit procedures in section 3113(b)(2) of the Act, a State may include such a student's performance within the English learner subgroup under paragraph (a)(2)(iv) of this section for not more than four years after the student ceases to be identified as an English learner (*i.e.,* the four years following the year in which the student meets the statewide exit criteria, consistent with § 299.19(b)(4)) for purposes of calculating any indicator under § 200.14(b) that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the Act, if the State develops a uniform statewide procedure for doing so that includes all such students and includes them—

(i) For the same State-determined period of time; and

(ii) For purpose of determining if a school meets the State's minimum number of students under § 200.17(a)(1) for the English learner subgroup when calculating performance on any such indicator.

(2) With respect to an English learner with a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) of the Act such that there are no appropriate accommodations for the affected domain(s) (*e.g.,* a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student's IEP team, 504 team, or individual or team designated by the LEA to make these decisions under Title II of the Americans with Disabilities Act, a State must, in measuring performance against the Progress in Achieving English Language Proficiency indicator, include such a student's performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.

(3) With respect to a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act, a State must include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act upon enrollment in a school in one of the 50 States or the District of Columbia (hereafter ''a school in the United States'') in calculating long-term goals and measurements of interim progress under § 200.13(a), annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, except that the State may either—

(i)(A) Exempt such an English learner from the first administration of the reading/language arts assessment;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the first year of such an English learner's enrollment in a school in the United States; and

(C) Include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the second year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter; or

(ii)(A) Assess, and report the performance of, such an English learner on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in each year of such an English learner's enrollment in a school in the United States;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the first year of such an English learner's enrollment in a school in the United States;

(C) Include a measure of such an English learner's growth on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating either the Academic Progress indicator or the Academic Achievement indicator in the second year of such an English learner's enrollment in a school in the United States; and

(D) Include a measure of such an English learner's proficiency on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the third year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter.

(4) A State may choose one of the exceptions described in paragraphs (c)(3)(i) or (ii) of this section for recently arrived English learners and must—

(i)(A) Apply the same exception to all recently arrived English learners in the State; or

(B) Develop and consistently implement a uniform statewide procedure for all recently arrived English learners that considers students' English language proficiency level at the time of the their identification as English learners and that may, at a State's discretion, consider one or more of the student characteristics under § 200.13(c)(2)(i)(B) through (E) in order to determine whether such an exception applies to an English learner; and

(ii) Report on State and LEA report cards under section 1111(h) of the Act the number and percentage of recently arrived English learners who are exempted from taking such assessments or whose results on such assessments are excluded from any indicator under § 200.14 on the basis of each exception described in paragraphs (c)(3)(i) and (ii) of this section.

(d) *Limitations.* A State may not include former children with disabilities or former English learners

within the applicable subgroups under paragraph (a)(2) of this section for—

(1) Any purpose in the accountability system, except as described in paragraphs (b) and (c)(1) of this section with respect to an indicator that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the Act and as described in § 200.34(e) with respect to calculating the four-year adjusted cohort graduation rate; or

(2) Purposes of reporting information on State and LEA report cards under section 1111(h) of the Act, except for providing information on the performance of the school, including a school's level of performance under § 200.18(b)(3), on any indicator that uses data from State assessments under section 1111(b)(2)(B)(v)(I) of the Act and for calculating the four-year adjusted cohort graduation rate consistent with § 200.34(e).

(e) *State plan.* Each State must describe in its State plan under section 1111 of the Act how it has met the requirements of this section, including by describing any subgroups of students used in the accountability system in addition to those in paragraph (a)(2) of this section, its uniform procedure for including former children with disabilities under paragraph (b) of this section and former English learners under paragraph (c)(1) of this section, and its uniform procedure for including recently arrived English learners under paragraph (c)(4) of this section, if applicable.

(Authority: 20 U.S.C. 6311(b)–(c), (h); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 9. Section 200.17 is revised to read as follows:

§ 200.17 Disaggregation of data.

(a) *Statistically sound and reliable information.* (1) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(i) Yield statistically reliable information for each purpose for which disaggregated data are used, including purposes of reporting information under section 1111(h) of the Act or purposes of the statewide accountability system under section 1111(c) of the Act; and

(ii) Ensure that, to the maximum extent practicable, each subgroup of students described in § 200.16(a)(2) is included at the school level for annual meaningful differentiation and identification of schools under §§ 200.18 and 200.19.

(2) Such number—

(i) Must be the same number for all students and for each subgroup of students in the State described in § 200.16(a)(2);

(ii) Must be the same number for all purposes of the statewide accountability system under section 1111(c) of the Act, including measuring school performance for each indicator under § 200.14;

(iii) Must not exceed 30 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section; and

(iv) May be a lower number for purposes of reporting under section 1111(h) under the Act than for purposes of the statewide accountability system under section 1111(c) of the Act so long as such number for reporting meets the requirements of paragraph (a)(2)(i) of this section.

(3) A State must include in its State plan under section 1111 of the Act—

(i) A description of how the State's minimum number of students meets the requirements of paragraphs (a)(1) and (2) of this section;

(ii) An explanation of how other components of the statewide accountability system, such as the State's uniform procedure for averaging data under § 200.20(a), interact with the State's minimum number of students to affect the statistical reliability and soundness of accountability data and to ensure the maximum inclusion of all students and each subgroup of students described in § 200.16(a)(2);

(iii) A description of the strategies the State uses to protect the privacy of individual students for each purpose for which disaggregated data is required, including reporting under section 1111(h) of the Act and the statewide accountability system under section 1111(c) of the Act, as required in paragraph (b) of this section;

(iv) Information regarding the number and percentage of all students and students in each subgroup described in § 200.16(a)(2) for whose results schools would not be held accountable in the system of annual meaningful differentiation under § 200.18; and

(v) For a State proposing a minimum number of students exceeding 30, a justification that explains how a minimum number of students exceeding 30 promotes sound, reliable accountability determinations, including data on the number and percentage of schools in the State that would not be held accountable in the system of annual meaningful differentiation under § 200.18 for the results of students in each subgroup described in § 200.16(a)(2) under the minimum number proposed by the State compared to the data on the number and percentage of schools in the State that would not be held accountable for the results of students in each subgroup if the minimum number of students were 30.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups described in § 200.16(a) to report required information under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student, teacher, principal, or other school leader.

(2) To determine whether the collection and dissemination of disaggregated information would reveal personally identifiable information about an individual student, teacher, principal, or other school leader, a State must apply the requirements under section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (2) of this section may be construed to abrogate the responsibility of a State to implement the requirements of section 1111(c) of the Act to annually meaningfully differentiate among all public schools in the State on the basis of the performance of all students and each subgroup of students described in section 1111(c)(2) of the Act on all indicators under section 1111(c)(4)(B) of the Act.

(4) Each State and LEA must implement appropriate strategies to protect the privacy of individual students in reporting information under section 1111(h) of the Act and in establishing annual meaningful differentiation of schools in its statewide accountability system under section 1111(c) of the Act on the basis of disaggregated subgroup information.

(c) *Inclusion of subgroups in assessments.* If a subgroup described in § 200.16(a) is not of sufficient size to produce statistically sound and reliable results, a State must still include students in that subgroup in its State assessments under section 1111(b)(2)(B)(i) of the Act.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically sound and reliable at the school level, a State must include those students in disaggregated information at each level for which the number of students is statistically sound and reliable (*e.g.,* the LEA or State level).

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 10. Section 200.18 is revised to read as follows:

§ 200.18 Annual meaningful differentiation of school performance: Performance levels, data dashboards, summative determinations, and indicator weighting.

(a) Each State must establish a system for annual meaningful differentiation for all public schools, including public charter schools, that—

(1) Includes the performance of all students and each subgroup of students in a school, consistent with §§ 200.16, 200.17, and 200.20(b), on each of the indicators described in § 200.14;

(2) Includes, for each indicator, at least three distinct and discrete levels of school performance that are consistent with attainment of the long-term goals and measurements of interim progress under § 200.13, if applicable, and that are clear and understandable to the public;

(3) Provides information on a school's level of performance (*e.g.,* through a data dashboard) on each indicator described in § 200.14, separately, as part of the description of the State's system for annual meaningful differentiation of schools on LEA report cards under § 200.32;

(4) Results in a single summative determination from among at least three distinct categories for each school, which must meaningfully differentiate between schools based on differing levels of performance on the indicators and which may include the two categories of schools described in § 200.19(a) and (b), to describe a school's overall performance in a clear and understandable manner as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;

(5) Meets the requirements of § 200.15 to annually measure the achievement of at least 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments described in section 1111(b)(2)(B)(v)(I) of the Act; and

(6) Informs the State's methodology described in § 200.19 for identifying schools for comprehensive support and improvement and for targeted support and improvement, including differentiation of schools with consistently underperforming subgroups of students consistent with paragraph (c) of this section and § 200.19(c).

(b) In providing annual meaningful differentiation among all public schools in the State, including providing a single summative determination for each school under paragraph (a)(4) of this section, a State must—

(1) Afford substantial weight to each of the following indicators, as applicable, under § 200.14:

(i) Academic Achievement indicator.

(ii) Academic Progress indicator.

(iii) Graduation Rate indicator.

(iv) Progress in Achieving English Language Proficiency indicator;

(2) Afford, in the aggregate, much greater weight to the indicators in paragraph (b)(1) of this section than to the indicator or indicators of School Quality or Student Success under § 200.14(b)(5), in the aggregate; and

(3) Within each grade span, afford the same relative weight to each indicator among all schools consistent with paragraph (d)(3) of this section.

(c) To show that its system of annual meaningful differentiation meets the requirements of paragraphs (a) and (b) of this section, a State must—

(1) In identifying schools for comprehensive support and improvement under § 200.19(a), demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement without such indicators, unless such a school has made significant progress in the prior year as determined by the State, for all students consistent with § 200.16(a)(1), on at least one of the indicators described in paragraph (b)(1)(i) through (iii) of this section;

(2) In identifying schools for targeted support and improvement under § 200.19(b), demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement without such indicators, unless such a school has made significant progress in the prior year as determined by the State, for each consistently underperforming or low-performing subgroup of students, on at least one of the indicators described in paragraph (b)(1) of this section; and

(3) Demonstrate that a school with a consistently underperforming subgroup of students under § 200.19(c) receives a lower summative determination under paragraph (a)(4) of this section than it would have otherwise received if it did not have any consistently underperforming subgroups of students; and

(d)(1) A State must demonstrate in its State plan under section 1111 of the Act how it has met the requirements of this section, including a description of—

(i) How a State calculates the performance levels on each indicator and a summative determination for each school under paragraph (a) of this section;

(ii) How the State's methodology under this section and § 200.19, including the weighting of indicators under paragraphs (b) and (c) of this section, will ensure that schools with low performance on the indicators described in paragraph (b)(1) of this section are more likely to be identified for comprehensive support and improvement or targeted support and improvement; and

(iii) Any different methodology, if a State chooses to develop such methodology, that the State uses to include all public schools in its system of annual meaningful differentiation consistent with paragraph (a) of this section, such as—

(A) Schools in which no grade level is assessed under the State's academic assessment system (*e.g.,* P–2 schools), although the State is not required to administer a standardized assessment to meet this requirement;

(B) Schools with variant grade configurations (*e.g.,* P–12 schools);

(C) Small schools in which the total number of students who can be included in any indicator under § 200.14 is less than the minimum number of students established by the State under § 200.17(a)(1), consistent with a State's uniform procedures for averaging data under § 200.20(a), if applicable;

(D) Schools that are designed to serve special populations (*e.g.,* students receiving alternative programming in alternative educational settings; students living in local institutions for neglected or delinquent children, including juvenile justice facilities; students enrolled in State public schools for the deaf or blind; and recently arrived English learners enrolled in public schools for newcomer students); and

(E) Newly opened schools that do not have multiple years of data, consistent with a State's uniform procedure for averaging data under § 200.20(a), if applicable, for at least one indicator (*e.g.,* a newly opened high school that has not yet graduated its first cohort for students).

(2) In meeting the requirement in paragraph (b)(1) of this section to afford substantial weight to certain indicators, a State is not required to afford each such indicator the same substantial weight.

(3) If a school does not meet the State's minimum number of students under § 200.17(a)(1) for the English learner subgroup, a State must—

(i) Exclude the Progress in Achieving English Language Proficiency indicator

from the annual meaningful differentiation for such a school under paragraph (a) of this section; and

(ii) Afford the Academic Achievement, Academic Progress, Graduation Rate, and School Quality or Student Success indicators the same relative weights in such a school as are afforded to such indicators in a school that meets the State's minimum number of students for the English learner subgroup.

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 11. Section 200.19 is revised to read as follows:

§ 200.19 Identification of schools.

(a) *Schools identified for comprehensive support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology, including a timeline consistent with paragraph (d) of this section, to identify one statewide category of schools for comprehensive support and improvement under § 200.21, which must include the following three types of schools:

(1) *Lowest-performing.* Not less than the lowest-performing five percent of all schools in the State participating under subpart A of this part, consistent with the requirements of § 200.18(a)(4).

(2) *Low high school graduation rate.* Any public high school in the State with a four-year adjusted cohort graduation rate, as calculated under § 200.34(a), at or below 67 percent, or below a higher percentage selected by the State.

(3) *Chronically low-performing subgroup.* Any school participating under subpart A of this part and identified pursuant to paragraph (b)(2) of this section that has not improved, as defined by the State, after implementing a targeted support and improvement plan over a State-determined number of years consistent with paragraph (d)(1)(i) of this section.

(b) *Schools identified for targeted support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify schools for targeted support and improvement under § 200.22, which must include the following two types of schools:

(1) *Consistently underperforming subgroup.* Any school that is not identified under paragraph (a) of this section with one or more consistently underperforming subgroups of students, as defined in paragraph (c) of this section and consistent with §§ 200.16 and 200.17.

(2) *Low-performing subgroup.* Any school that is not identified under paragraph (a) of this section in which one or more subgroups of students is performing, using the State's methodology for identifying the lowest-performing schools under paragraph (a)(1) of this section, at or below the performance of all students in any school identified under paragraph (a)(1) of this section. Schools identified under this paragraph must receive additional targeted support in accordance with section 1111(d)(2)(C) of the Act.

(c) *Methodology to identify consistently underperforming subgroups.* The description required by paragraph (b)(1) of this section must demonstrate that the State's methodology to identify schools with one or more consistently underperforming subgroups of students under paragraph (b)(1) of this section—

(1) Considers each school's performance among each subgroup of students in the school consistent with §§ 200.16 and 200.17, over no more than two years, unless the State demonstrates that a longer timeframe will better support low-performing subgroups of students to make significant progress in achieving the State's long-term goals and measurements of interim progress in order to close statewide proficiency and graduation rate gaps, consistent with section 1111(c)(4)(A)(i)(III) of the Act and § 200.13;

(2) Is based on all indicators under § 200.14 used for annual meaningful differentiation under § 200.18 consistent with the requirements for weighting of indicators described in § 200.18(b); and

(3) Defines a consistently underperforming subgroup of students in a uniform manner across all LEAs in the State, which must include—

(i) A subgroup of students that is not meeting at least one of the State's measurements of interim progress or is not on track to meet at least one of the State-designed long-term goals under § 200.13 or is performing below a State-determined threshold on an indicator for which the State is not required to establish long-term goals under § 200.13; or

(ii) Another State-determined definition.

(d) *Timeline.* (1) A State must identify—

(i) Each type of school for comprehensive support and improvement under paragraphs (a)(1) through (3) of this section at least once every three years, beginning with identification for the 2018–2019 school year, except that identification of schools with chronically low-performing subgroups under paragraph (a)(3) of this section is not required for the 2018–2019 school year;

(ii) Schools with one or more consistently underperforming subgroups of students for targeted support and improvement under paragraph (b) of this section annually, beginning with identification for the 2019–2020 school year; and

(iii) Schools with one or more low-performing subgroups of students for targeted support and improvement under paragraph (b)(2) of this section—

(A) Beginning with identification for the 2018–2019 school year;

(B) At least once every three years; and

(C) With such identification occurring in each year, consistent with paragraph (d)(1)(i) of this section, in which the State identifies schools for comprehensive support and improvement.

(2) Each year for which a State must identify schools for comprehensive or targeted support and improvement, it must—

(i) Make such identification as soon as possible, but no later than the beginning of each school year; and

(ii) For purposes of identifying schools under this section, use data from the preceding school year (*e.g.,* data from the 2017–2018 school year inform identification for the 2018–2019 school year), and, at the State's discretion, data from earlier school years, consistent with § 200.20(a), except that a State is not required to use adjusted cohort graduation rate data from the preceding school year if the State uses data from the school year immediately prior to the preceding school year (*e.g.,* data from the 2016–2017 school year inform identification for the 2018–2019 school year).

Types of schools	Description	Statutory provision	Regulatory provision	Timeline for identification	Initial year of identification
Category: Comprehensive Support and Improvement					
Lowest-Performing.	Lowest-performing five percent of schools in the State participating in Title I.	1111(c)(4)(D)(i)(I)	§ 200.19(a)(1)	At least once every three years.	2018–2019.
Low High School Graduation Rate.	Any public high school in the State with a four-year adjusted cohort graduation rate at or below 67 percent, or below a higher percentage selected by the State, over no more than three years.	Section 1111(c)(4)(D)(i)(II)	§ 200.19(a)(2)	At least once every three years.	2018–2019.
Chronically Low-Performing Subgroup.	Any school participating in Title I that (a) was identified for targeted support and improvement because it had a subgroup of students performing at or below the performance of all students in the lowest-performing schools and (b) did not improve after implementing a targeted support and improvement plan over a State-determined number of years.	Section 1111(c)(4)(D)(i)(III), 1111(d)(3)(A)(i)(II).	§ 200.19(a)(3)	At least once every three years.	State-determined.
Category: Targeted Support and Improvement					
Consistently Underperforming Subgroup.	Any school with one or more consistently underperforming subgroups.	Section 1111(c)(4)(C)(iii), 1111(d)(2)(A)(i).	§ 200.19(b)(1), (c)	Annually	2019–2020.
Low-Performing Subgroup.	Any school in which one or more subgroups of students is performing at or below the performance of all students in the lowest-performing schools. These schools must receive additional targeted support under the law. If this type of school is a Title I school that does not improve after implementing a targeted support and improvement plan over a State-determined number of years, it becomes a school that has a chronically low-performing subgroup and is identified for comprehensive support and improvement.	Section 1111(d)(2)(D)	§ 200.19(b)(2)	At least once every three years.	2018–2019.

(Authority: 20 U.S.C. 6311(c) and (d); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 12. Section § 200.20 is revised to read as follows:

§ 200.20 Data procedures for annual meaningful differentiation and identification of schools.

(a) *Averaging data.* For the purposes of calculating the indicators under § 200.14 that are used for annual meaningful differentiation under § 200.18, meeting the requirement under § 200.15(b)(2), and identifying high schools with low graduation rates under § 200.19(a)(2), a State may establish a uniform procedure for averaging school-level data that includes one or both of the following:

(1) *Combining data across school years.* (i) A State may combine data across up to three school years.

(ii) If a State combines data across school years for these purposes, the State must—

(A) Use the same uniform procedure for combining data from the school year for which the identification is made with data from one or two school years immediately preceding that school year for all public schools, including by summing the total number of students in each subgroup of students described in § 200.16(a)(2) across all school years when calculating a school's performance on each indicator under § 200.14 and determining whether the subgroup meets the State's minimum number of students described in § 200.17(a)(1);

(B) Report data for a single school year, without combining, on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for combining data in its State plan under section 1111 of the Act and specify that such procedure is used in its description of the indicators used for annual meaningful differentiation on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(2) *Combining data across grades.* (i) A State may combine data across grades in a school.

(ii) If a State combines data across grades for these purposes, the State must—

(A) Use the same uniform procedure for combining data for all public schools;

(B) Report data for each grade in the school on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for combining data in its State plan under section 1111 of the Act, and specify that

such procedure is used in its description of the indicators used for annual meaningful differentiation in its accountability system on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(b) *Partial enrollment.* (1) In calculating school performance on each of the indicators for the purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must include all students who were enrolled in the same school within an LEA for at least half of the academic year.

(2) A State may not use the performance of a student who has been enrolled in the same school within an LEA for less than half of the academic year in its system of annual meaningful differentiation and identification of schools, except that—

(i) An LEA must include such student in calculating the Graduation Rate indicator under § 200.14(b)(3), if applicable;

(ii) If such student exited a high school without receiving a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such school year, the LEA must assign such student, for purposes of calculating the Graduation Rate indicator and consistent with the approach established by the State under § 200.34, to either—

(A) The high school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) The high school in which the student was most recently enrolled; and

(iii) All students, regardless of their length of enrollment in a school within an LEA during the academic year, must be included for purposes of reporting on the State and LEA report cards under section 1111(h) of the Act for such school year.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 13. Section 200.21 is revised to read as follows:

§ 200.21 Comprehensive support and improvement.

(a) *In general.* A State must notify each LEA in the State that serves one or more schools identified for comprehensive support and improvement under § 200.19(a) of such identification as soon as possible, but no later than the beginning of the school year for which such school is identified.

(b) *Notice.* Upon receiving the notification from the State under paragraph (a) of this section, an LEA must promptly notify the parents of each student enrolled in the school of the school's identification for comprehensive support and improvement, including, at a minimum, the reason or reasons for the identification under § 200.19(a) (*e.g.,* low performance of all students, low graduation rate, chronically low-performing subgroup), and an explanation of how parents can become involved in the needs assessment under paragraph (c) of this section and in developing and implementing the comprehensive support and improvement plan described in paragraph (d) of this section. Such notice must—

(1) Be in an understandable and uniform format;

(2) Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(3) Be, upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent.

(c) *Needs assessment.* For each identified school, an LEA must conduct, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive needs assessment that examines, at a minimum—

(1) Academic achievement data on each of the assessments required under section 1111(b)(2)(B)(v) of the Act for all students in the school, including for each subgroup of students described in § 200.16(a)(2);

(2) The school's performance, including among subgroups of students described in § 200.16(a)(2), on the long-term goals and measurements of interim progress and indicators described in §§ 200.13 and 200.14;

(3) The reason or reasons the school was identified for comprehensive support and improvement under § 200.19(a);

(4) The school's unmet needs, including those with respect to—

(i) Students (*e.g.,* wrap-around support);

(ii) School leadership and instructional staff (*e.g.,* professional development, working conditions, time for planning, career ladder, and leadership opportunities);

(iii) Quality of the instructional program;

(iv) Family and community involvement;

(v) School climate; and

(vi) Distribution of resources (*e.g.,* based on the State periodic review of resources under § 200.23(a)); and

(5) At the LEA's discretion, the school's performance on additional, locally selected measures that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school.

(d) *Comprehensive support and improvement plan.* Each LEA must, with respect to each school identified by the State for comprehensive support and improvement, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders; teachers; parents and, as appropriate, students; and, for LEAs affected by section 8538 of the Act, Indian tribes), as demonstrated, at a minimum, by describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of the plan, including any changes made as a result of such input; and

(ii) Stakeholders will participate in an ongoing manner in the plan's implementation;

(2) Includes and is based on the results of the needs assessment described in paragraph (c) of this section;

(3) Includes one or more interventions (*e.g.,* increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic, racial, and ethnic backgrounds; replacing school leadership with leaders who are trained for or have a record of success in low-performing schools; increasing access to high-quality preschool (in the case of an elementary school); converting the school to a public charter school; changing school governance; closing the school; and, in the case of a public charter school, working in coordination with the applicable authorized public chartering agency, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with State charter school law and the terms of such a school's charter) to improve student outcomes in the school that—

(i) Meet the definition of ''evidence-based'' under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs identified in the needs assessment under paragraph (c) of this section;

(iv) May be selected from a non-exhaustive list of evidence-based interventions if such a list is established by the State, and must be selected from an exhaustive list of evidence-based interventions if such a list is established by the State, consistent with § 200.23(c)(2);

(v) May be an evidence-based intervention determined by the State, consistent with State law, as described in section 1111(d)(1)(3)(B)(ii) of the Act and § 200.23(c)(3); and

(vi) May include differentiated improvement activities that utilize interventions that meet the definition of ''evidence-based'' under section 8101(21) of the Act in any high school identified under § 200.19(a)(2) that predominantly serves students—

(A) Returning to education after having exited secondary school without a regular high school diploma; or

(B) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, as established by the State;

(4) Identifies and addresses resource inequities, by—

(i) Including a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to—

(A) Differences in rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act;

(B) Access to advanced coursework, including accelerated coursework as reported annually consistent with section 1111(h)(1)(C)(viii) of the Act;

(C) Access in elementary schools to full-day kindergarten programs and to preschool programs as reported annually consistent with section 1111(h)(1)(C)(viii) of the Act;

(D) Access to specialized instructional support personnel, as defined in section 8101(47) of the Act, including school counselors, school social workers, school psychologists, other qualified professional personnel, and school librarians; and

(E) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to resources described in paragraph (d)(4)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as instructional materials and technology;

(5) Must be fully implemented in the school year for which such school is identified, except that an LEA may have a planning year during which the LEA must carry out the needs assessment required under paragraph (c) of this section and develop the comprehensive support and improvement plan to prepare for successful implementation of interventions required under the plan during the planning year or, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Must be made publicly available by the LEA, including to parents consistent with the requirements under paragraphs (b)(1) through (3) of this section; and

(7) Must be approved by the school identified for comprehensive support and improvement, the LEA, and the State.

(e) *Plan approval and monitoring.* The State must, upon receipt from an LEA of a comprehensive support and improvement plan under paragraph (d) of this section—

(1) Review such plan against the requirements of this section and approve the plan in a timely manner, as determined by the State, taking all actions necessary to ensure that the school and LEA are able to meet all of the requirements of paragraphs (a) through (d) of this section to develop and implement the plan within the required timeframe; and

(2) Monitor and periodically review each LEA's implementation of such plan.

(f) *Exit criteria.* (1) To ensure continued progress to improve student academic achievement and school success, the State must establish, make publicly available, and describe in its State plan under section 1111 of the Act, uniform statewide exit criteria for each school implementing a comprehensive support and improvement plan under this section. Such exit criteria must, at a minimum, require that the school—

(i) Improve student outcomes; and

(ii) No longer meet the criteria under which the school was identified under § 200.19(a) within a State-determined number of years (not to exceed four years).

(2) If a school does not meet the exit criteria established under paragraph (f)(1) of this section within the State-determined number of years, the State must, at a minimum, require the LEA to conduct a new comprehensive needs assessment that meets the requirements under paragraph (c) of this section.

(3) Based on the results of the new needs assessment, the LEA must, with respect to each school that does not meet the exit criteria, amend its comprehensive support and improvement plan described in paragraph (d) of this section, in partnership with stakeholders consistent with the requirements in paragraph (d)(1) of this section, to—

(i) Address the reasons the school did not meet the exit criteria, including whether the school implemented the interventions with fidelity and sufficient intensity, and the results of the new needs assessment;

(ii) Update how it will continue to address previously identified resource inequities and to identify and address any newly identified resource inequities consistent with the requirements in paragraph (d)(4) of this section; and

(iii) Include implementation of additional interventions in the school that may address school-level operations (which may include staffing, budgeting, and changes to the school day and year) and that must—

(A) Be determined by the State, which may include requiring an intervention from among any State-established evidence-based interventions or a State-approved list of evidence-based interventions, consistent with State law and § 200.23(c)(2) and (3);

(B) Be more rigorous, including one or more evidence-based interventions in the plan that are supported by strong or moderate evidence, consistent with section 8101(21)(A) of the Act;

(C) Be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served; and

(D) Must be described in its State plan under section 1111 of the Act.

(4) Each LEA must—

(i) Make the amended comprehensive support and improvement plan described in paragraph (f)(3) of this section publicly available, including to parents consistent with paragraphs (b)(1) through (3) of this section; and

(ii) Submit the amended plan to the State in a timely manner, as determined by the State.

(5) After the LEA submits the amended plan to the State, the State must—

(i) Review and approve the amended plan, and any additional amendments to the plan, consistent with the review process required under paragraph (e)(1) of this section; and

(ii) Increase its monitoring, support, and periodic review of each LEA's implementation of such plan.

(g) *State discretion for small high schools.* With respect to any high school in the State identified for comprehensive support and improvement under § 200.19(a)(2), the State may, in the case of such a school that has a total enrollment of less than 100 students, permit the LEA to forego development or implementation of a school support and improvement plan or any implementation of improvement activities required under this section.

(h) *Public school choice.* Consistent with section 1111(d)(1)(D) of the Act, an LEA may provide all students enrolled in a school identified by the State for comprehensive support and improvement under § 200.19(a) with the option to transfer to another public school that is served by the LEA and that is not identified for comprehensive support and improvement under § 200.19(a), unless such an option is prohibited by State law or inconsistent with a Federal desegregation order, in which case the LEA must petition and obtain court approval for such transfers.

(Approved by the Office of Management and Budget under control number 1810–0581) (Authority: 20 U.S.C. 6311(d); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 42 U.S.C. 12102)

■ 14. Section 200.22 is revised to read as follows:

§ 200.22 Targeted support and improvement.

(a) *In general.* With respect to each school that the State identifies under § 200.19(b) or, as applicable, under § 200.15(b)(2)(iii), as a school requiring targeted support and improvement, each State must—

(1) Notify as soon as possible, but no later than the beginning of the school year for which such school is identified, each LEA serving such school of the identification; and

(2) Ensure such LEA provides notification to each school identified for targeted support and improvement, including the reason for identification (*i.e.,* the subgroup or subgroups described in § 200.16(a)(2) that are identified as consistently underperforming under § 200.19(b)(1), the subgroup or subgroups that are low-performing under § 200.19(b)(2) and will receive additional targeted support, and, at the State's discretion, the subgroup or subgroups that are identified under § 200.15(b)(2)(iii)), no later than the beginning of the school year for which such school is identified.

(b) *Notice.* (1) Upon receiving the notification from the State under paragraph (a)(1) of this section, the LEA must promptly notify the parents of each student enrolled in the school of the school's identification for targeted support and improvement, consistent with the requirements under § 200.21(b)(1) through (3).

(2) The notice must include—

(i) The reason or reasons for the identification (*i.e.,* which subgroup or subgroups are consistently underperforming under § 200.19(b)(1), which subgroup or subgroups are low-performing under § 200.19(b)(2) and will receive additional targeted support, and any subgroup or subgroups identified under § 200.15(b)(2)(iii) if the State chooses to require such schools to implement targeted support and improvement plans); and

(ii) An explanation of how parents can become involved in developing and implementing the targeted support and improvement plan described in paragraph (c) of this section.

(c) *Targeted support and improvement plan.* Upon receiving the notification from the LEA under paragraph (a)(2) of this section, each school must develop and implement a school-level targeted support and improvement plan to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders; teachers; and parents and, as appropriate, students) as demonstrated by, at a minimum, describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of each component of the plan, including any changes made as a result of such input; and

(ii) Stakeholders will have an opportunity to participate in an ongoing manner in such plan's implementation;

(2) Is designed to improve student performance for the lowest-performing students on each of the indicators under § 200.14 that led to the identification of the school for targeted support and improvement or, in the case of schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii), to improve student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act;

(3) Takes into consideration—

(i) The school's performance on the long-term goals and measurements of interim progress and the indicators described in §§ 200.13 and 200.14, including student academic achievement on each of the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(ii) At the school's discretion, the school's performance on additional, locally selected measures that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school;

(4) Includes one or more interventions to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(i) Meet the definition of ''evidence-based'' under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to improve student outcomes for the lowest-performing students in the school; and

(iv) May be selected from a non-exhaustive list of evidence-based interventions if such a list is established by the State, and must be selected from an exhaustive list of evidence-based interventions if such a list is established by the State, consistent with § 200.23(c)(2);

(5) Must be fully implemented in the school year for which such school is identified, except that a school identified under § 200.19(b) may have a planning year during which the school must develop the targeted support and improvement plan and complete other activities necessary to prepare for successful implementation of interventions required under the plan during the planning year or, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Is submitted to the LEA for approval, pursuant to paragraph (d) of this section;

(7) In the case of a school with low-performing subgroups as described in § 200.19(b)(2), and to ensure such school receives additional targeted support as required under section

1111(d)(2)(C) of the Act, identifies and addresses resource inequities by—

(i) Including a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to—

(A) Differences in rates at which low-income and minority students are taught by ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act;

(B) Access to advanced coursework, including accelerated coursework as reported annually consistent with section 1111(h)(1)(C)(viii) of the Act;

(C) Access in elementary schools to full-day kindergarten programs and to preschool programs as reported annually consistent with section 1111(h)(1)(C)(viii) of the Act;

(D) Access to specialized instructional support personnel, as defined in section 8101(47) of the Act, including school counselors, school social workers, school psychologists, other qualified professional personnel, and school librarians; and

(E) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the school's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to resources described in paragraph (c)(7)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as instructional materials and technology; and

(8) For any school operating a schoolwide program under section 1114 of the Act, addresses the needs identified by the needs assessment required under section 1114(b)(6) of the Act.

(d) *Plan approval and monitoring.* The LEA must, upon receipt of a targeted support and improvement plan under paragraph (c) of this section from a school—

(1) Review each plan against the requirements of this section and approve such plan in a timely manner, taking all actions necessary to ensure that each school is able to meet all of the requirements under paragraph (c) of this section within the required timeframe;

(2) Make the approved plan, and any amendments to the plan, publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3); and

(3) Monitor the school's implementation of the plan.

(e) *Exit criteria.* Except with respect to schools described in paragraph (f) of this section, the LEA must establish and make publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3), uniform exit criteria for schools identified by the State under § 200.19(b) and, as applicable, § 200.15(b)(2)(iii), and use such criteria to make one of the following determinations with respect to each such school after a number of years as determined by the LEA:

(1) The school has successfully implemented its targeted support and improvement plan such that it no longer meets the criteria for identification and has improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(b)(1) or low-performing under § 200.19(b)(2), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has met the requirement under § 200.15(a)(2) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, and will exit targeted support and improvement status.

(2) The school has unsuccessfully implemented its targeted support and improvement plan such that it has not improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(b)(1) or low-performing under § 200.19(b)(2), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has failed to meet the requirement under § 200.15(a)(2) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, in which case the LEA must subsequently—

(i) Require the school to amend its targeted support and improvement plan to include additional actions that continue to meet all requirements under paragraph (c) of this section and address the reasons the school did not meet the exit criteria, and encourage interventions that either meet a higher level of evidence under paragraph (c)(4) of this section than the interventions included in the school's original plan or increase the intensity of effective interventions in the school's original plan;

(ii) Review and approve the school's amended plan consistent with the review process required under paragraph (d)(1) of this section; and

(iii) Increase its monitoring and support of such school's implementation of the plan.

(f) *Special rule for schools with low-performing subgroups.* (1) With respect to any school participating under subpart A of this part that has one or more low-performing subgroups as described in § 200.19(b)(2), the State must establish, make publicly available, and describe in its State plan under section 1111 of the Act, uniform statewide exit criteria that, at a minimum, ensure each such school—

(i) Improves student outcomes for its lowest-performing students, including each subgroup of students identified as low-performing under § 200.19(b)(2); and

(ii) No longer meets the criteria for identification under § 200.19(b)(2).

(2) If a school does not satisfy the exit criteria established under paragraph (f)(1) of this section within a State-determined timeline, the State must identify the school for comprehensive support and improvement under § 200.19(a)(3), consistent with § 200.19(d)(1)(i).

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 15. Add § 200.23 to read as follows:

§ 200.23 State responsibilities to support continued improvement.

(a) *State support.* Each State must include in its State plan under section 1111 of the Act a description of how it will, with respect to each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement under § 200.19, periodically review resources, including the resources listed in § 200.21(d)(4)(i)(A) through (E), available in such LEAs as compared to all other LEAs in the State and in schools in those LEAs as compared to all other schools in the State, consider any inequities identified under §§ 200.21(d)(4) and 200.22(c)(7), and, to the extent practicable, address any identified inequities in resources.

(b) *State technical assistance.* Each State must include in its State plan under section 1111 of the Act a description of technical assistance it will provide to each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement, including, at a minimum, a description of how it will provide technical assistance to LEAs to ensure the effective implementation of evidence-based interventions and support and increase their capacity to successfully—

(1) Develop and implement comprehensive support and improvement plans that meet the requirements of § 200.21;

(2) Ensure schools develop and implement targeted support and improvement plans that meet the requirements of § 200.22; and

(3) Develop or use tools related to—

(i) Conducting a school-level needs assessment consistent with § 200.21(c);

(ii) Selecting evidence-based interventions consistent with §§ 200.21(d)(3) and 200.22(c)(4); and

(iii) Reviewing resource allocation and identifying strategies for addressing any identified resource inequities consistent with §§ 200.21(d)(4) and 200.22(c)(7).

(c) *Additional improvement actions.* Consistent with State law, the State may—

(1) Take action to initiate additional improvement in any LEA, or in any authorized public chartering agency consistent with State charter school law, that serves a significant number or percentage of schools that are identified for comprehensive support and improvement under § 200.19(a) and are not meeting exit criteria established under § 200.21(f) or a significant number or percentage of schools identified for targeted support and improvement under § 200.19(b), which may include—

(i) LEA-level actions such as reducing the LEA's operational or budgetary autonomy; removing one or more schools from the jurisdiction of the LEA; or restructuring the LEA, including changing its governance or initiating State takeover of the LEA;

(ii) In the case of an authorized public chartering agency, monitoring, limiting, or revoking the authority of the agency to issue, renew, and revoke school charters; and

(iii) School-level actions such as reorganizing a school to implement a new instructional model; replacing school leadership with leaders who are trained for or have a record of success in low-performing schools; converting a school to a public charter school; changing school governance; closing a school; or, in the case of a public charter school, working in coordination with the applicable authorized public chartering agency, revoking or non-renewing the school's charter consistent with State charter school law and the terms of the school's charter;

(2) Establish and approve an exhaustive or non-exhaustive list of evidence-based interventions consistent with the definition of evidenced-based under section 8101(21) of the Act for use in schools implementing comprehensive support and improvement or targeted support and improvement plans under § 200.21 or § 200.22;

(3) Develop one or more evidence-based, State-determined interventions consistent with section 1111(d)(3)(B)(ii) of the Act that can be used by LEAs in a school identified for comprehensive support and improvement under § 200.19(a), such as whole-school reform models; and

(4) Require that LEAs submit to the State for review and approval, in a timely manner, the amended targeted support and improvement plan for each school in the LEA described in § 200.22(e)(2)(i) prior to the approval of such plan by the LEA.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 16. Add § 200.24 to read as follows:

§ 200.24 Resources to support continued improvement.

(a) *In general.* (1) A State must allocate school improvement funds that it reserves under section 1003(a) of the Act to LEAs to serve schools implementing comprehensive or targeted support and improvement plans under §§ 200.21 or 200.22, except that such funds may not be used to serve schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii).

(2) An LEA may apply for school improvement funds if—

(i) It has one or more schools identified for comprehensive support and improvement under § 200.19(a) or targeted support and improvement under § 200.19(b) consistent with paragraph (a)(1) of this section; and

(ii) It applies to serve each school in the LEA identified for comprehensive support and improvement that it has sufficient capacity to serve before applying to serve any school in the LEA identified for targeted support and improvement.

(b) *LEA application.* To receive school improvement funds under paragraph (a) of this section, an LEA must submit an application to the State to serve one or more schools identified for comprehensive or targeted support and improvement. In addition to any other information that the State may require, such an application must include each of the following:

(1) A description of one or more evidence-based interventions that are based on strong, moderate, or promising evidence as defined under section 8101(21)(A) of the Act and that will be implemented in each school the LEA proposes to serve.

(2) A description of how the LEA will carry out its responsibilities under §§ 200.21 and 200.22 for schools it will serve with funds under this section, including how the LEA will—

(i) Develop and implement a comprehensive support and improvement plan that meets the requirements of § 200.21 for each school identified under § 200.19(a), for which the LEA receives school improvement funds to serve; and

(ii) Support each school identified under § 200.19(b), for which the LEA receives school improvement funds to serve, in developing and implementing a targeted support and improvement plan that meets the requirements of § 200.22.

(3) A budget indicating how it will allocate school improvement funds among schools identified for comprehensive support and improvement and targeted support and improvement that it proposes to serve.

(4) The LEA's plan to monitor schools for which the LEA receives school improvement funds, including the LEA's plan to increase monitoring of a school that does not meet the exit criteria consistent with §§ 200.21(f), 200.22(e), or 200.22(f).

(5) A description of the rigorous review process the LEA will use to recruit, screen, select, and evaluate any external partners with which the LEA will partner in carrying out activities supported with school improvement funds.

(6) A description of how the LEA will align other Federal, State, and local resources to carry out the activities supported with school improvement funds.

(7) A description of how the LEA will sustain effective activities in schools after funding under this section is complete.

(8) As appropriate, a description of how the LEA will modify practices and policies to provide operational flexibility, including with respect to school budgeting and staffing, that enables full and effective implementation of comprehensive support and improvement and targeted support and improvement plans.

(9) For any LEA that plans to use the first year of its school improvement funds for planning activities in a school that it will serve, a description of the activities that will be supported with school improvement funds, the timeline for implementing those activities, how such timeline will ensure full implementation of the comprehensive or targeted support and improvement plan consistent with §§ 200.21(d)(5) and 200.22(c)(5), and how those activities

will support successful implementation of comprehensive or targeted support and improvement plans.

(10) An assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have received in the absence of funds received under this section.

(c) *Allocation of school improvement funds to LEAs.* (1) A State must review, in a timely manner, an LEA application for school improvement funds that meets the requirements of this section.

(2) In awarding school improvement funds under this section, a State must—

(i) Award the funds on a competitive or formula basis;

(ii) Make each award of sufficient size, with a minimum award of $500,000 per year for each school identified for comprehensive support and improvement to be served and a minimum award of $50,000 per year for each school identified for targeted support and improvement to be served, to support the LEA to effectively implement all requirements for a support and improvement plan under § 200.21 or § 200.22, as applicable, including selected evidence-based interventions, except that a State may determine that an award of less than the minimum award amount is appropriate if, based on each school's enrollment, identified needs, selected evidence-based interventions, and other relevant factors described in the LEA's application on behalf of the school, that such lesser amount will be sufficient to support effective implementation of such plan; and

(iii) Make awards not to exceed four years, which may include a planning year consistent with paragraph (b)(9) of this section during which the LEA must plan to carry out activities that will be supported with school improvement funds by, at the latest, the beginning of the school year following the school year for which the school was identified, and that will support the successful implementation of interventions required under §§ 200.21 or 200.22, as applicable.

(3) If a State permits an LEA to have a planning year for a school under paragraph (c)(2)(iii) of this section, prior to renewing the LEA's school improvement award with respect to such school, the State must review the performance of the LEA in supporting such school during the planning year against the LEA's approved application and determine that the LEA will be able to ensure such school fully implements the activities and interventions that will be supported with school improvement funds by the beginning of the school year following the planning year.

(4) If a State has insufficient school improvement funds to award a grant of sufficient size to each LEA that submits an approvable application consistent with paragraph (c)(1) of this section, the State must, whether awarding funds through a formula or competition—

(i) Award funds to an LEA to serve a school identified for comprehensive support and improvement before awarding funds to an LEA to serve a school identified for targeted support and improvement;

(ii) Give priority in funding to an LEA that demonstrates the greatest need for such funds, as determined by the State, and based, at a minimum, on—

(A) The number or percentage of elementary and secondary schools in the LEA implementing plans under §§ 200.21 or 200.22;

(B) The State's review of resources available among and within LEAs under § 200.23(a); and

(C) Current academic achievement and student outcomes in the school or schools the LEA is proposing to serve.

(iii) Give priority in funding to an LEA that demonstrates the strongest commitment to use such funds to enable the lowest-performing schools to improve academic achievement and student outcomes, taking into consideration, with respect to the school or schools to be served—

(A) The proposed use of evidence-based interventions that are supported by the strongest level of evidence available and sufficient to support the school in making progress toward meeting exit criteria under § 200.21 or § 200.22; and

(B) Commitment to family and community engagement.

(iv) Take into consideration geographic diversity within the State.

(d) *State responsibilities.* (1) In its State plan under section 1111 of the Act, each State must describe how it will—

(i) Award school improvement funds to LEAs, consistent with paragraph (c) of this section;

(ii) Monitor the use of funds by LEAs receiving school improvement funds;

(iii) Evaluate the use of school improvement funds by LEAs receiving such funds including by, at a minimum—

(A) Engaging in ongoing efforts to analyze the impact of the evidence-based interventions implemented using funds allocated under this section on student outcomes or other relevant outcomes; and

(B) Disseminating on a regular basis the State's findings on the impact of the evidence-based interventions to LEAs with schools identified under § 200.19;

(iv) Prior to renewing an LEA's award of school improvement funds with respect to a particular school each year and consistent with paragraph (c)(2)(ii) of this section, determine that—

(A) The school is making progress on the State's long-term goals and measurements of interim progress and accountability indicators under §§ 200.13 and 200.14; and

(B) The school is implementing evidence-based interventions with fidelity to the LEA's application and the requirements under §§ 200.21 or 200.22, as applicable; and

(v) As appropriate, reduce barriers and provide operational flexibility for each school in an LEA receiving funds under this section, including flexibility around school budgeting and staffing.

(2) A State may—

(i) Set aside up to five percent of the school improvement funds the State reserves under section 1003(a) of the Act to carry out the activities under paragraph (d)(1) of this section; and

(ii) Directly provide for school improvement activities funded under this section or arrange for their provision in a school through external partners such as school support teams, educational service agencies, or nonprofit or for-profit entities with expertise and a record of success in implementing evidence-based strategies to improve student achievement, instruction, and schools if the State has the authority under State law to take over the school or, if the State does not have such authority, with LEA approval with respect to each such school, and—

(A) The State undertakes a rigorous review process in recruiting, screening, selecting, and evaluating any external partner the State uses to carry out activities directly with school improvement funds; and

(B) The external provider has demonstrated success implementing the evidence-based intervention or interventions that are based on strong, moderate, or promising evidence consistent with section 8101(21)(A) of the Act that it will implement.

(e) *Reporting.* The State must include on its State report card required under section 1111(h)(1) of the Act a list of all LEAs, and schools served by such LEAs, that received funds under this section, including the amount of funds each LEA received to serve each such school and the types of interventions implemented in each such school with the funds.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 6303; 20 U.S.C. 6311(d); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474)

■ 17. Revise the undesignated center heading following § 200.29 to read as follows:

State and LEA Report Cards

■ 18. Section 200.30 is revised to read as follows:

§ 200.30 Annual State report card.

(a) *State report cards in general.* (1) A State that receives funds under subpart A of this part must prepare and disseminate widely to the public, consistent with paragraph (d) of this section, an annual State report card for the State as a whole that meets the requirements of this section.

(2) Each State report card must include, at a minimum—

(i) The information required under section 1111(h)(1)(C) of the Act;

(ii) As applicable, for each authorized public chartering agency in the State—

(A) A comparison between the percentage of students in each subgroup defined in section 1111(c)(2) of the Act for each charter school authorized by such agency and such percentage for the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(B) A comparison between the academic achievement under § 200.30(b)(2)(i)(A) for students in each charter school authorized by such agency and the academic achievement for students in the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(iii) Any additional information that the State believes will best inform parents, students, and other members of the public regarding the progress of each of the State's public elementary schools and secondary schools, which may include the number and percentage of students requiring remediation in postsecondary education and the number and percentage of students attaining career and technical proficiencies.

(3) A State may meet its cross-tabulation requirements under section 1111(g) of the Act through its State report cards.

(b) *Format.* (1) The State report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents.

(2) The State report card must begin with a clearly labeled overview section that is prominently displayed and includes the following statewide information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students described in § 200.16(a)(2), results on—

(A) Each of the academic assessments in reading/language arts, mathematics, and science under section 1111(b)(2) of the Act, including the number and percentage of students at each level of achievement;

(B) Each measure included within the Academic Progress indicator under § 200.14(b)(2) for students in public elementary schools and secondary schools that are not high schools;

(C) The four-year adjusted cohort graduation rate and, if adopted by the State, any extended-year adjusted cohort graduation rate consistent with § 200.34; and

(D) Each measure included within the School Quality or Student Success indicator(s) under § 200.14(b)(5).

(ii) The number and percentage of English learners achieving English language proficiency, as measured by the English language proficiency assessments under section 1111(b)(2)(G) of the Act.

(3) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C) of the Act, a State must ensure that the disaggregated data not included in the overview section are otherwise included on the State report card.

(c) *Accessibility.* Each State report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* A State must—

(1) Disseminate widely to the public the State report card by, at a minimum, making it available on a single Web page of the SEA's Web site; and

(2) Include on the SEA's Web site—

(i) The report card required under § 200.31 for each LEA in the State; and

(ii) The annual report to the Secretary required under section 1111(h)(5) of the Act.

(e) *Timing of report card dissemination.* (1) Beginning with the State report card based on information from the 2017–2018 school year, a State must annually disseminate the State report card for the preceding school year no later than December 31.

(2) In meeting the deadline under paragraph (e)(1) of this section, a State may delay inclusion of per-pupil expenditure data required under § 200.35 until no later than the following June 30, provided the State report card includes a brief description of when such data will be publicly available.

(3) If a State cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(1)(C) of the Act for the 2017–2018 school year, the State may request from the Secretary a one-time, one-year extension for reporting on those elements. To receive an extension, a State must submit to the Secretary, by July 1, 2018—

(i) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (e)(1) of this section; and

(ii) A plan and timeline addressing the steps the State will take to disseminate the State report card for the 2018–2019 school year consistent with this section.

(f) *Disaggregation of data.* (1) For the purpose of reporting disaggregated data under section 1111(h) of the Act, the following definitions apply:

(i) The term ''migrant status'' means status as a ''migratory child'' as defined in section 1309(3) of the Act, which means a child or youth who made a qualifying move in the preceding 36 months—

(A) As a migratory agricultural worker or a migratory fisher; or

(B) With, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

(ii) The term ''homeless status'' means status as ''homeless children and youths'' as defined in section 725 of the McKinney-Vento Homeless Assistance Act, as amended, which means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1) of the McKinney-Vento Homeless Assistance Act) and includes—

(A) Children and youths who are—

(*1*) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(*2*) Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;

(*3*) Living in emergency or transitional shelters; or

(*4*) Abandoned in hospitals;

(B) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section

103(a)(2)(C) of the McKinney-Vento Homeless Assistance Act);

(C) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(D) Migratory children (as defined in this paragraph) who qualify as homeless for the purposes of this section because they are living in circumstances described in paragraph (f)(1)(ii)(A) through (C) of this section.

(iii) With respect to the term ''status as a child in foster care,'' the term ''foster care'' has the same meaning as defined in 45 CFR 1355(a), which means 24-hour substitute care for children placed away from their parents and for whom the title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

(iv) With respect to the term ''student with a parent who is a member of the Armed Forces on active duty,'' such term includes a parent on full-time National Guard duty. The terms ''Armed Forces,'' ''active duty,'' and ''full-time National Guard duty'' have the same meanings as defined in 10 U.S.C. 101(a)(4), 101(d)(1), and 101(d)(5):

(A) ''Armed Forces'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(B) ''Active duty'' means full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(C) ''Full-time National Guard duty'' means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(2) A State is not required to report disaggregated data for information required on the State report card under section 1111(h) of the Act if the number of students in the subgroup is insufficient to yield statistically sound and reliable information or the results would reveal personally identifiable information about an individual student, consistent with § 200.17.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6301; 20 U.S.C. 6311(h); 20 U.S.C. 6571(a))

■ 19. Section § 200.31 is revised to read as follows:

§ 200.31 Annual LEA report card.

(a) *LEA report card in general.* (1) An LEA that receives funds under subpart A of this part must prepare and disseminate to the public, consistent with paragraph (d) of this section, an annual LEA report card that meets the requirements of this section and includes information on the LEA as a whole and each school served by the LEA.

(2) Each LEA report card must include, at a minimum, the information required under section 1111(h)(2)(C) of the Act.

(b) *Format.* (1) The LEA report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents.

(2) Each LEA report card must begin with, for the LEA as a whole and for each school served by the LEA, a clearly labeled overview section that is prominently displayed and includes the following information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students required described in § 200.16(a)(2)—

(A) All information required under § 200.30(b)(2);

(B) For the LEA, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the State as a whole; and

(C) For each school, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the LEA and the State as a whole.

(ii) For each school—

(A) The summative determination of the school consistent with § 200.18(a)(4);

(B) Whether the school is identified for comprehensive support and improvement under § 200.19(a) and, if so, the reason for such identification (*i.e.,* lowest-performing school, low graduation rates, or school with a chronically low-performing subgroup(s)); and

(C) Whether the school is identified for targeted support and improvement under § 200.19(b) or § 200.15(b)(2)(iii) and, if so, each subgroup for which it is identified (*i.e.,* subgroup or subgroups who are consistently underperforming or low-performing or, as applicable, who have missed the requirement for 95 percent student participation in assessments).

(iii) Identifying information, including, but not limited to, the name, address, phone number, email, student membership count, and status as a participating Title I school.

(3) Each LEA must ensure that the overview section required under paragraph (b)(2) of this section for each school served by the LEA can be distributed to parents, consistent with paragraph (d)(3)(i) of this section.

(4) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C)(ii) of the Act, an LEA must ensure that the disaggregated data not included in the overview section are otherwise included on the LEA report card.

(c) *Accessibility.* Each LEA report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* (1) An LEA report card must be accessible to the public.

(2) At a minimum the LEA report card must be made available on the LEA's Web site, except that an LEA that does not operate a Web site may provide the information to the public in another manner determined by the LEA.

(3) An LEA must provide, for each school served by the LEA, the information described in paragraph (b)(2) of this section to the parents of each student enrolled in the school—

(i) Directly to parents, through such means as regular mail, email, or other direct means of distribution; and

(ii) In a timely manner, consistent with the requirements under paragraph (e) of this section.

(e) *Timing of LEA report card dissemination.* (1) Beginning with the LEA report card based on information from the 2017–2018 school year, an LEA must annually disseminate its report

card for the preceding school year no later than December 31.

(2) In meeting the deadline under paragraph (e)(1) of this section, an LEA may delay inclusion of per-pupil expenditure data required under § 200.35 until no later than the following June 30, provided the report card includes a brief description of when such data will be publicly available.

(3) If an LEA cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(2)(C) of the Act for the 2017–2018 school year, a State may request from the Secretary a one-time, one-year extension for reporting on those elements on behalf of the LEA consistent with the requirements under § 200.30(e)(3).

(f) *Disaggregation of data.* For the purpose of reporting disaggregated data under section 1111(h)(2)(C) of the Act, the requirements under § 200.30(f) apply to LEA report cards.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6571(a); 20 U.S.C. 6311(h))

■ 20. Section 200.32 is revised to read as follows:

§ 200.32 Description and results of a State's accountability system.

(a) *Accountability system description.* Each State and LEA report card must include a clear and concise description of the State's current accountability system under §§ 200.12 to 200.24. Each accountability system description must include—

(1) The minimum number of students that the State establishes under § 200.17(a) for use in the accountability system;

(2) The long-term goals and measurements of interim progress that the State establishes under § 200.13 for all students and for each subgroup of students described in § 200.16(a)(2);

(3) The indicators used by the State under § 200.14 to annually meaningfully differentiate among all public schools, including, if applicable, the State's uniform procedure for averaging data across years or grades consistent with § 200.20(a);

(4) The State's system for annually meaningfully differentiating all public schools in the State under § 200.18, including—

(i) The specific weight, consistent with § 200.18(b) and (c), of each indicator described in § 200.14(b) in such differentiation;

(ii) The way in which the State factors the requirement for 95 percent student participation in assessments under § 200.15(a)(2) into its system of annual meaningful differentiation described in §§ 200.15(b) and 200.18(a)(5);

(iii) The methodology by which the State differentiates all such schools under § 200.18(a), including information on the performance levels and summative determinations provided by the State consistent with § 200.18(a)(3) and (4);

(iv) The methodology by which the State identifies a school for comprehensive support and improvement as described in § 200.19(a); and

(v) The methodology by which the State identifies a school for targeted support and improvement as described in § 200.19(b) and (c), including the definition and time period used by the State to determine consistently underperforming subgroups of students; and

(5) The exit criteria established by the State under §§ 200.21(f) and 200.22(f), including the number of years by which a school must meet the exit criteria.

(b) *Reference to State plan.* To the extent that a State plan or another location on the SEA's Web site provides a description of the accountability system elements required in paragraph (a)(1) through (5) of this section that complies with the requirements under § 200.21(b)(1) through (3), a State or LEA may provide the Web address or URL of, or a direct link to, such State plan or location on the SEA's Web site to meet the reporting requirement for such accountability system elements.

(c) *Accountability system results.* (1) Each State and LEA report card must include, as applicable, the number and names of each public school in the State or LEA identified by the State for—

(i) Comprehensive support and improvement under § 200.19(a); or

(ii) Targeted support and improvement under § 200.19(b).

(2) For each school identified by the State for comprehensive support and improvement under § 200.19(a), the State and LEA report card must indicate which of the following reasons led to such identification:

(i) Lowest-performing school under § 200.19(a)(1).

(ii) Low graduation rates under § 200.19(a)(2).

(iii) One or more chronically low-performing subgroups under § 200.19(a)(3), including the subgroup or subgroups that led to such identification.

(3) For each school identified by the State for targeted support and improvement under § 200.19(b) or § 200.15(b)(2)(iii), the State and LEA report card must indicate—

(i) Which subgroup or subgroups led to the school's identification; and

(ii) Whether the school has one or more subgroups who are consistently underperforming or low-performing or, as applicable, who have missed the requirement for 95 percent student participation in assessments.

(4) Each LEA report card must include, for each school served by the LEA, the school's performance level consistent with § 200.18(a)(2) and (3) on each indicator in § 200.14(b) and the school's summative determination consistent with § 200.18(a)(4).

(5) If a State includes more than one measure within any indicator under § 200.14(b), the LEA report card must include each school's results on each individual measure and the single performance level for the indicator overall, across all such measures.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6311(c), (h); 20 U.S.C. 6571(a))

■ 21. Section 200.33 is revised to read as follows:

§ 200.33 Calculations for reporting on student achievement and progress toward meeting long-term goals.

(a) *Calculations for reporting student achievement results.* (1) Consistent with paragraph (a)(3) of this section, each State and LEA report card must include the percentage of students performing at each level of achievement under section 1111(b)(1)(A) of the Act (*e.g.,* proficient, advanced) on the academic assessments under section 1111(b)(2) of the Act, overall and by grade.

(2) Consistent with paragraph (a)(3) of this section, each LEA report card must also—

(i) Compare the results under paragraph (a)(1) of this section for students served by the LEA with students in the State as a whole; and

(ii) For each school served by the LEA, compare the results under paragraph (a)(1) of this section for students enrolled in the school with students served by the LEA and students in the State as a whole.

(3) Each State and LEA report card must include, with respect to each reporting requirement under paragraphs (a)(1) and (2) of this section—

(i) Information for all students;

(ii) Information disaggregated by—

(A) Each subgroup of students described in § 200.16(a)(2);

(B) Migrant status;

(C) Gender;

(D) Homeless status;

(E) Status as a child in foster care; and

(F) Status as a student with a parent who is a member of the Armed Forces on active duty or serves on full-time National Guard duty; and

(iii) Results based on both—

(A) The percentage of students at each level of achievement, in which the denominator includes the greater of—

(*1*) 95 percent of all students, or 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(*2*) The number of all such students enrolled in the school, LEA, or State, respectively, who participate in the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(B) The percentage of students at each level of achievement, in which the denominator includes all students with a valid test score.

(b) *Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.* (1) Each State and LEA report card must indicate whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for academic achievement under § 200.13(a).

(2) To meet the requirements of paragraph (b)(1) of this section, each State and LEA must calculate the percentage of students who are proficient and above on the State assessments required under section 1111(b)(2)(B)(v)(I) of the Act based on a denominator that includes the greater of—

(i) 95 percent of all students, and 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(ii) The number of all such students enrolled in the school, LEA, or State, respectively who participate in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(c) *Calculation for reporting the percentage of students assessed and not assessed.* (1) Each State and LEA report card must include the percentage of all students, and the percentage of students disaggregated by each subgroup of students described in § 200.16(a)(2), gender, and migrant status, assessed and not assessed on each of the assessments required under section 1111(b)(2)(B)(v) of the Act.

(2) To meet the requirements of paragraph (c)(1) of this section, each State and LEA must include in the denominator of the calculation all students enrolled in the school, LEA, or State, respectively, at the time of testing.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6311(c), (h); 20 U.S.C. 6571(a))

■ 22. Section 200.34 is revised to read as follows:

§ 200.34 High school graduation rate.

(a) *Four-year adjusted cohort graduation rate.* A State must calculate a four-year adjusted cohort graduation rate for each public high school in the State in the following manner:

(1) The numerator must consist of the sum of—

(i) All students who graduate in four years with a regular high school diploma; and

(ii) All students with the most significant cognitive disabilities in the cohort, assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and awarded a State-defined alternate diploma.

(2) The denominator must consist of the number of students who form the adjusted cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data is collected annually by the State for submission to the National Center for Education Statistics.

(3) For those high schools that start after grade 9, the cohort must be calculated based on the earliest high school grade students attend.

(b) *Adjusting the cohort.* (1) ''Adjusted cohort'' means the students who enter grade 9 (or the earliest high school grade) plus any students who transfer into the cohort in grades 9 through 12, and minus any students removed from the cohort.

(2) ''Students who transfer into the cohort'' means the students who enroll after the beginning of the date of the determination of the cohort, up to and including in grade 12.

(3) To remove a student from the cohort, a school or LEA must confirm in writing that the student—

(i) Transferred out, such that the school or LEA has official written documentation that the student enrolled in another school or educational program from which the student is expected to receive a regular high school diploma, or a State-defined alternate diploma for students with the most significant cognitive disabilities;

(ii) Emigrated to another country;

(iii) Transferred to a prison or juvenile facility after an adjudication of delinquency, and is enrolled in an educational program from which the student is expected to receive a regular high school diploma, or a State-defined alternate diploma for students with the most significant cognitive disabilities, during the period in which the student is assigned to the prison or juvenile facility; or

(iv) Is deceased.

(4) A student who is retained in grade, enrolls in a general equivalency diploma program or other alternative education program that does not issue or provide credit toward the issuance of a regular high school diploma or a State-defined alternate diploma, or leaves school for any reason other than those described in paragraph (b)(3) of this section may not be counted as having transferred out for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(5) For students with the most significant cognitive disabilities assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and who are eligible for a State-defined alternate diploma under § 200.34(c)(3), an LEA or school must—

(i) Assign the student to the cohort of entering first-time students in grade 9 and ensure that the student remains in that cohort through grade 12.

(ii) Remove such a student from the original cohort if the student does not graduate after four years but continues to be enrolled in the school or LEA and is expected to receive a State-defined alternate diploma that meets the requirements of paragraph (c)(3) of this section;

(iii) Reassign such a student who graduates with a State-defined alternate diploma after more than four years to the cohort of students graduating in that year and include the student in the numerator and denominator of the graduation rate calculation—

(A) For the four-year adjusted cohort graduation rate for the year in which the student graduates; and

(B) For an extended-year adjusted cohort graduation rate under paragraph (d) of this section for one or more subsequent years, if the State has adopted such a rate.

(iv) Reassign such a student who after more than four years does not graduate with a State-defined alternate diploma that meets the requirements of paragraph (c)(3) of this section to the cohort of students graduating in the year in which the student exits high school and include the student in the denominator of the graduation rate calculation—

(A) For the four-year adjusted cohort graduation rate for the year in which the student exits high school; and

(B) For an extended-year adjusted cohort graduation rate under paragraph (d) of this section for one or more subsequent years, if the State has adopted such a rate.

(c) *Definition of terms.* For the purposes of calculating an adjusted cohort graduation rate under this section—

(1) ''Students who graduate in four years'' means students who earn a regular high school diploma before, during, or at the conclusion of their fourth year, or during a summer session immediately following their fourth year.

(2) ''Regular high school diploma'' means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma. A regular high school diploma does not include—

(i) A diploma aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; or

(ii) A general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals.

(3) ''Alternate diploma'' means a diploma for students with the most significant cognitive disabilities, as defined by the State, who are assessed with a State's alternate assessments aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and is—

(i) Standards-based;

(ii) Aligned with the State's requirements for a regular high school diploma; and

(iii) Obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(1)).

(d) *Extended-year adjusted cohort graduation rate.* In addition to calculating a four-year adjusted cohort graduation rate, a State may calculate and report an extended-year adjusted cohort graduation rate.

(1) ''*Extended-year adjusted cohort graduation rate*'' means the number of students who graduate in four years, plus the number of students who graduate in one or more additional years beyond the fourth year of high school with a regular high school diploma or a State-defined alternate diploma, divided by the number of students who form the adjusted cohort for the four-year adjusted cohort graduation rate, provided that the adjustments account for any students who transfer into the cohort by the end of the year of graduation being considered minus the number of students who transfer out, emigrate to another country, transfer to a prison or juvenile facility, or are deceased, as described in paragraph (b)(3) of this section.

(2) A State may calculate one or more extended-year adjusted cohort graduation rates.

(e) *Reporting on State and LEA report cards.* (1) A State and LEA report card must include, at the school, LEA, and State levels—

(i) Four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates for all students and disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care.

(ii) Whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for graduation rates under § 200.13(b); and

(2) In reporting graduation rates disaggregated by each subgroup of students described in § 200.16(a)(2), homeless status, and status as a child in foster care, a State and its LEAs must include students who were children with disabilities, English learners, children who are homeless (as defined in § 200.30(f)(1)(ii)), or children who are in foster care (as defined in § 200.30(f)(1)(iii)) at any time during the cohort period.

(3) A State and its LEAs must report the four-year adjusted cohort graduation rate and, if adopted by the State, extended-year adjusted cohort graduation rate that reflects results of the immediately preceding school year.

(4) If a State adopts an extended-year adjusted cohort graduation rate, the State and its LEAs must report the extended-year adjusted cohort graduation rate separately from the four-year adjusted cohort graduation rate.

(f) *Partial school enrollment.* Each State must apply the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b) who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate—

(1) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(2) At the school in which the student was most recently enrolled.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6311(h); 20 U.S.C. 6571(a); 20 U.S.C. 7801(23), (25))

■ 23. Section 200.35 is revised to read as follows:

§ 200.35 Per-pupil expenditures.

(a) *State report card requirements.* (1) Each State report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.30(e), for each LEA in the State, and for each school served by each LEA—

(A) In the aggregate; and

(B) Disaggregated by source of funds, including—

(*1*) Federal funds; and

(*2*) State and local funds combined plus Federal funds intended to replace local tax revenues, which may not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section that complies with the requirements under § 200.21(b)(1) through (3).

(2) Each State report card must also separately include, for each LEA, the amount of current expenditures per pupil that were not included in school-level per-pupil expenditure data for public schools in the LEA.

(b) *LEA report card requirements.* (1) Each LEA report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.31(e), for the LEA and each school served by the LEA—

(A) In the aggregate; and

(B) Disaggregated by source of funds, including—

(*1*) Federal funds; and

(*2*) State and local funds combined plus Federal funds intended to replace local tax revenues, which may not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section.

(2) Each LEA report card must also separately include the amount of current expenditures per pupil that

were not included in school-level per-pupil expenditure data for public schools in the LEA.

(c) *Uniform procedures.* A State must develop a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil, such that—

(1) The numerator consists of current expenditures, which means actual personnel costs (including actual staff salaries) and actual non-personnel expenditures of Federal, State, and local funds, used for public education—

(i) Including, but not limited to, expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, preschool, and net expenditures to cover deficits for food services and student body activities; but

(ii) Not including expenditures for community services, capital outlay, and debt service; and

(2) The denominator consists of the aggregate number of students enrolled in preschool through grade 12 to whom the State and LEA provide free public education on or about October 1, consistent with the student membership data collected annually by the State for submission to the National Center for Education Statistics.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6571(a); 20 U.S.C. 6311(h))

■ 24. Section 200.36 is revised to read as follows:

§ 200.36 Postsecondary enrollment.

(a) *Reporting information on postsecondary enrollment.* (1) Each State and LEA report card must include the information at the SEA, LEA and high school level on postsecondary enrollment required under section 1111(h)(1)(C)(xiii) of the Act, where available, consistent with paragraph (c) of this section. This information must include, for each high school in the State (in the case of a State report card) and for each high school in the LEA (in the case of an LEA report card), the cohort rate (for all students and each subgroup of students described in section § 200.16(a)(2)) at which students who graduate from high school enroll in programs of postsecondary education, including—

(i) Programs of public postsecondary education in the State; and

(ii) If data are available and to the extent practicable, programs of private postsecondary education in the State or public and private programs of postsecondary education outside the State.

(2) For the purposes of this section, ''programs of postsecondary education'' has the same meaning as the term ''institution of higher education'' under section 101(a) of the Higher Education Act of 1965, as amended.

(b) *Calculating postsecondary enrollment.* To meet the requirements of paragraph (a) of this section, each State and LEA must calculate the cohort rate in the following manner:

(1) The numerator must consist of the number of students who enroll in a program of postsecondary education in the academic year following the students' high school graduation.

(2) The denominator must consist of the number of students who graduated with a regular high school diploma or a State-defined alternate diploma from each high school in the State, in accordance with § 200.34, in the immediately preceding school year.

(c) *Information availability.* (1) For the purpose of paragraph (a) of this section, information is ''available'' if either—

(i) The State is routinely obtaining the information; or

(ii) The information is obtainable by the State on a routine basis.

(2) If the postsecondary enrollment information described in paragraph (a) of this section is not available or is partially available, the State and LEA report cards must include the school year in which such information is expected to be fully available.

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1001(a); 20 U.S.C. 6571(a); 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 6311(h))

■ 25. Section 200.37 is revised to read as follows:

§ 200.37 Educator qualifications.

(a) *Professional qualifications of educators in the State.* Each State and LEA report card must include, in the aggregate and disaggregated by high-poverty and low-poverty schools, the number and percentage of the following:

(1) Inexperienced teachers, principals, and other school leaders;

(2) Teachers teaching with emergency or provisional credentials; and

(3) Teachers who are not teaching in the subject or field for which the teacher is certified or licensed.

(b) *Uniform definitions.* For purposes of paragraph (a) of this section, the following definitions apply:

(1) ''High-poverty schools'' means schools in the top quartile of poverty in the State;

(2) ''Low-poverty schools'' means schools in the bottom quartile of poverty in the State; and

(3) Each State must adopt, and the State and each LEA in the State must use, a statewide definition of the term ''inexperienced'' and of the phrase ''not teaching in the subject or field for which the teacher is certified or licensed.''

(Approved by the Office of Management and Budget under control number 1810–0581)

(Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 3474; 20 U.S.C. 6571(a); 20 U.S.C. 6311(h))

§§ 200.38 through 200.42 [Removed and Reserved]

■ 26. Remove and reserve §§ 200.38 through 200.42.

■ 27. Add an undesignated center heading following reserved § 200.42 to read as follows:

Other State Plan Provisions

§ 200.43 [Removed]

■ 28. Remove § 200.43.

§ 200.58 [Redesignated as § 200.43]

■ 29. Redesignate § 200.58 as § 200.43.

§§ 200.44 through 200.47 [Removed and Reserved]

■ 30. Remove and reserve §§ 200.44 through 200.47.

■ 31. Add an undesignated center heading following reserved § 200.47 to read as follows:

Local Educational Agency Plans

§ 200.48 [Removed]

■ 32. Remove § 200.48.

§ 200.61 [Redesignated as 200.48]

■ 33. Redesignate § 200.61 as § 200.48.

§§ 200.49 through 200.53 [Removed and Reserved]

■ 34. Remove and reserve §§ 200.49 through 200.53.

■ 35. Add an undesignated center heading following reserved § 200.54 to read as follows:

Participation of Eligible Children in Private Schools

§§ 200.55 through 200.57 [Removed and Reserved]

■ 36. Remove §§ 200.55 through 200.57.

§§ 200.62 through 200.64 [Redesignated as §§ 200.55 through 200.57]

■ 37. Redesignate §§ 200.62 through 200.64 as §§ 200.55 through 200.57.

§§ 200.58 through 200.60 [Removed]

■ 38. Remove §§ 200.58 through 200.60.

§ 200.65 [Redesignated as § 200.58]

■ 39. Redesignate § 200.65 as § 200.58.

§§ 200.66 through 200.67 [Redesignated as §§ 200.59 through 200.60]

■ 40. Redesignate §§ 200.66 through 200.67 as §§ 200.59 through 200.60.

§ 200.61 [Reserved]

■ 41. Add reserved §§ 200.61.

§ 200.62 [Removed and Reserved]

■ 42. Remove and reserve § 200.62.

■ 43. Add an undesignated center heading following reserved § 200.62 to read as follows:

Allocations to LEAs

§§ 200.63 through 200.67 [Removed]

■ 44. Remove §§ 200.63 through 200.67.

§§ 200.70 through 200.75 [Redesignated as §§ 200.63 through 200.68]

■ 45. Redesignate §§ 200.70 through 200.75 as §§ 200.63 through 200.68.

■ 46. Add an undesignated center heading following reserved § 200.69 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

§§ 200.77 and 200.78 [Redesignated as §§ 200.70 and 200.71]

■ 47. Redesignate §§ 200.77 and 200.78 as §§ 200.70 and 200.71.

■ 48. Add an undesignated center heading following § 200.71 to read as follows:

Fiscal Requirements

§ 200.79 [Redesignated as § 200.73

■ 49. Redesignate § 200.79 as § 200.73.

§ 200.79 [Reserved]

■ 50. Add reserved § 200.79.

PART 299—GENERAL PROVISIONS

■ 51. The authority citation for part 299 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted)

§ 299.1 [Amended]

■ 52. In § 299.1 revise paragraph (a) to read as follows:

§ 299.1 What are the purpose and scope of these regulations?

(a) This part establishes uniform administrative rules for programs in titles I through XII of the Elementary and Secondary Education Act of 1965, as amended (ESEA or the Act). As indicated in particular sections of this part, certain provisions apply only to a specific group of programs.

* * * * *

■ 53. Add Subpart G to read as follows:

Subpart G—State Plans

Sec.

299.13 Overview of State plan requirements.
299.14 Requirements for the consolidated State plan.
299.15 Consultation and performance management.
299.16 Academic assessments.
299.17 Accountability, support, and improvement for schools.
299.18 Supporting excellent educators.
299.19 Supporting all students.

Subpart G—State Plans

§ 299.13 Overview of State plan requirements.

(a) *In general.* In order to receive a grant under a program identified in paragraph (j) of this section, an SEA must submit a State plan that meets the requirements in this section and:

(1) Consolidated State plan requirements detailed in §§ 299.14 to 299.19; or

(2) Individual program application requirements under the Act (hereinafter ''individual program State plan'') as detailed in paragraph (k) of this section.

(b) *Timely and meaningful consultation.* In developing an initial consolidated State plan or an individual program State plan, or revising or amending an approved consolidated State plan or an individual program State plan, an SEA must engage in timely and meaningful consultation with stakeholders. To satisfy its consultation obligations under this paragraph, each SEA must—

(1) Provide public notice, in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3), of the SEA's processes and procedures for developing and adopting its consolidated State plan or individual program State plan.

(2) Conduct outreach to, and solicit input from, the individuals and entities listed in § 299.15(a) for submission of a consolidated State plan or the individuals and entities listed in the applicable statutes for submission of an individual program State plan, in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3)—

(i) During the design and development of the SEA's plan to implement the programs included in paragraph (j) of this section;

(ii) At a minimum, prior to initial submission of the consolidated State plan or individual program State plan by making the plan available for public comment for a period of not less than 30 days; and

(iii) Prior to the submission of any revisions or amendments to the approved consolidated State plan or individual program State plan.

(3) Describe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan submitted for approval, including—

(i) How the SEA addressed the issues and concerns raised through consultation and public comment; and

(ii) Any changes made as a result of consultation and public comment.

(4) Meet the requirements under section 8540 of the Act regarding consultation with the Governor, or appropriate officials from the Governor's office, including—

(i) Consultation during the development of a consolidated State plan or individual title I or title II State plan and prior to submission of such plan to the Secretary; and

(ii) Procedures regarding the signature of such plan.

(c) *Assurances.* An SEA that submits either a consolidated State plan or an individual program State plan must submit to the Secretary the assurances included in section 8304 of the Act. An SEA also must include the following assurances when submitting either a consolidated State plan or an individual program State plan for the following programs:

(1) *Title I, part A.* (i) In applying the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b), the SEA will assure that students who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate using one of the following:

(A) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) At the school in which the student was most recently enrolled.

(ii) To ensure that children in foster care promptly receive transportation, as necessary, to and from their schools of origin when in their best interest under section 1112(c)(5)(B) of the Act, the SEA must ensure that an LEA receiving funds under title I, part A of the Act will collaborate with State and local child welfare agencies to develop and implement clear written procedures that describe:

(A) How the requirements of section 1112(c)(5)(B) of the Act will be met in the event of a dispute over which agency or agencies will pay any additional costs incurred in providing transportation; and

(B) Which agency or agencies will initially pay the additional costs so that transportation is provided promptly during the pendency of the dispute.

(iii) The SEA must assure, under section 1111(g)(1)(B) of the Act, that it will publish and annually update—

(A) The statewide differences in rates required under § 299.18(c)(3);

(B) The percentage of teachers categorized in each LEA at each effectiveness level established as part of the definition of ''ineffective teacher'' under § 299.18(c)(2)(i), consistent with applicable State privacy policies;

(C) The percentage of teachers categorized as out-of-field teachers consistent with § 200.37; and

(D) The percentage of teachers categorized as inexperienced teachers consistent with § 200.37.

(E) The information required under paragraphs (c)(1)(iii)(A) through (D) of this section in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3) and available at least on a Web site.

(2) *Title III, part A.* (i) In establishing the statewide entrance procedures required under section 3113(b)(2) of the Act, the SEA must ensure that:

(A) All students who may be English learners are assessed for such status using a valid and reliable instrument within 30 days after enrollment in a school in the State;

(B) It has established procedures for the timely identification of English learners after the initial identification period for students who were enrolled at that time but were not previously identified; and

(C) It has established procedures for removing the English learner designation from any student who was erroneously identified as an English learner, which must be consistent with Federal civil rights obligations.

(ii) In establishing the statewide entrance and exit procedures required under section 3113(b)(2) of the Act and § 299.19(b)(4), the SEA will ensure that the criteria are consistent with Federal civil rights obligations.

(3) *Title V, part b, subpart 2.* The SEA will assure that, no later than March of each year, it will submit data to the Secretary on the number of students in average daily attendance for the preceding school year in kindergarten through grade 12 for LEAs eligible for funding under the Rural and Low-Income School program, as described under section 5231 of the Act.

(d) *Process for submitting an initial consolidated State plan or individual program State plan.* When submitting an initial consolidated State plan or an individual program State plan, an SEA must adhere to the following timeline and process.

(1) *Assurances.* In order to receive Federal allocations for the programs included in paragraph (j) of this section, each SEA must submit the required assurances described in paragraph (c) of this section, and if submitting a consolidated State plan, the required assurances under § 299.14(c), on a date, time, and manner (*e.g.,* electronic or paper) established by the Secretary.

(2) *Submission deadlines.* (i) Each SEA must submit to the Department either a consolidated State plan or individual program State plan for each program in paragraph (j) of this section on a date, time, and manner (*e.g.,* electronic or paper) established by the Secretary.

(ii) For the purposes of the period for Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the Act, a consolidated State plan or an individual program State plan is considered to be submitted on the date and time established by the Secretary if it is received by the Secretary on or prior to that date and time and addresses all of the required components in § 299.14 for a consolidated State plan or all statutory and regulatory application requirements for an individual program State plan.

(iii) Each SEA must submit either a consolidated State plan or an individual program State plan for all of the programs in paragraph (j) in a single submission on the date, time, and manner (*e.g.,* electronic or paper) established by the Secretary consistent with paragraph (d)(2)(i) of this section.

(3) *Extension for educator equity student-level data calculation.* If an SEA cannot calculate and report the data required under paragraph § 299.18(c)(3)(i) when submitting its initial consolidated State plan or individual title I, part A State plan, the SEA may request a three-year extension from the Secretary.

(i) To receive an extension, the SEA must indicate in its initial consolidated State plan or individual title I, part A State plan that it will calculate the statewide rates described under paragraph § 299.18(c)(3)(i) using school-level data and provide a detailed plan and timeline addressing the steps it will take to calculate and report, as expeditiously as possible but no later than three years from the date it submits its initial consolidated State plan or individual title I, part A program State plan, the data required under § 299.18(c)(3)(i) at the student level.

(ii) An SEA that receives an extension under this paragraph (d)(3) must, when it submits either its initial consolidated State plan or individual title I, part A program State plan, still calculate and report the differences in rates based on school-level data consistent with § 299.18(c).

(e) *Opportunity to revise initial State plan.* An SEA may revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary. The period for Secretarial review of a consolidated State plan or an individual program State plan under sections 1111(a)(4)(A)(v) or 8451 of the Act is suspended while the SEA revises its plan. If an SEA fails to resubmit a revised plan within 45 days of receipt of the preliminary written determination, the Secretary may issue a final written determination under sections 1111(a)(4)(A)(v) or 8451 of the Act.

(f) *Publication of State plan.* After the Secretary approves a consolidated State plan or an individual program State plan, an SEA must publish its approved consolidated State plan or individual program State plan on the SEA's Web site in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3).

(g) *Amendments and Significant Changes.* If an SEA makes significant changes to its approved consolidated State plan or individual program State plan at any time, consistent with section 1111(a)(6)(B) of the Act, such information must be submitted to the Secretary in the form of an amendment to its State plan for review and approval. Prior to submitting an amendment to its consolidated State plan or individual program State plan, the SEA must engage in timely and meaningful consultation, consistent with paragraph (b) of this section.

(h) *Revisions.* At least once every four years, an SEA must review and revise its approved consolidated State plan or individual program State plans. The SEA must submit its revisions to the Secretary for review and approval. When reviewing and revising its consolidated State plan or individual program State plan, each SEA must engage in timely and meaningful consultation, consistent with paragraph (b) of this section.

(i) *Optional consolidated State plan.* An SEA may submit either a

consolidated State plan or an individual program State plan for any program identified in paragraph (j) of this section. An SEA that submits a consolidated State plan is not required to submit an individual program State plan for any of the programs to which the consolidated State plan applies.

(j) *Programs that may be included in a consolidated State plan.* (1) Under section 8302 of the Act, an SEA may include in a consolidated State plan any programs authorized by—

(i) Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies;

(ii) Title I, part C: Education of Migratory Children;

(iii) Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

(iv) Title II, part A: Supporting Effective Instruction;

(v) Title III, part A: Language Instruction for English Learners and Immigrant Students;

(vi) Title IV, part A: Student Support and Academic Enrichment Grants;

(vii) Title IV, part B: 21st Century Community Learning Centers; and

(viii) Title V, part B, subpart 2: Rural and Low-Income School Program.

(2) In addition to the programs identified in paragraph (j)(1) of this section, under section 8302(a)(1)(B) of the Act, an SEA may also include in the consolidated State plan, as designated by the Secretary, the Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as amended by the ESSA.

(k) *Individual program State plan requirements.* An SEA that submits an individual program State plan for one or more of the programs listed in paragraph (j) of this section must address all State plan or application requirements applicable to such programs as contained in the Act and applicable regulations, including all required statutory and programmatic assurances. In addition to addressing the statutory and regulatory plan or application requirements for each individual program, an SEA that submits an individual program State plan—

(1) For title I, part A, must:

(i) Meet the educator equity requirements in § 299.18(c) in order to address section 1111(g)(1)(B) of the Act; and

(ii) Meet the schoolwide waiver requirements in § 299.19(c)(1) in order to implement section 1114(a)(1)(B) of the Act;

(2) For title I, part C, must meet the education of migratory children requirements in § 299.19(b)(2) in order to address sections 1303(f)(2), 1304(d), and 1306(b)(1)of the Act; and

(3) For title III, must meet the English learner requirements in § 299.19(b)(4) in order to address section 3113(b)(2) of the Act.

(l) *Compliance with program requirements.* Each SEA must administer all programs in accordance with all applicable statutes, regulations, program plans, and approved applications, and maintain documentation of this compliance.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 1221e–3, 3474, 6571(a), 7801(11), 7842, 7844, 7871)

§ 299.14 Requirements for the consolidated State plan.

(a) *Purpose.* Pursuant to section 8302 of the Act, the Department defines the procedures under which an SEA may submit a consolidated State plan for any or all of the programs listed in § 299.13(j).

(b) *Framework for the consolidated State plan.* Each consolidated State plan must address the requirements in §§ 299.15 through 299.19 for the following five components and their corresponding elements:

(1) Consultation and performance management.

(2) Academic assessments.

(3) Accountability, support, and improvement for schools.

(4) Supporting excellent educators.

(5) Supporting all students.

(c) *Assurances.* In addition to the assurances in § 299.13(c), an SEA must include the following assurances on a date, time, and manner (*e.g.,* electronic or paper) established by the Secretary as part of its consolidated State plan:

(1) *Coordination.* The SEA must assure that it coordinated its plans for administering the included programs, other programs authorized under the ESEA, as amended by the ESSA, and the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, the Carl D. Perkins Career and Technical Education Act of 2006, the Workforce Innovation and Opportunity Act, the Head Start Act, the Child Care and Development Block Grant Act of 1990, the Education Sciences Reform Act of 2002, the Education Technical Assistance Act of 2002, the National Assessment of Educational Progress Authorization Act, and the Adult Education and Family Literacy Act.

(2) *Challenging academic standards and academic assessments.* The SEA must assure that the State will meet the standards and assessments requirements of sections 1111(b)(1)(A) through (F) and 1111(b)(2) of the Act and applicable regulations.

(3) *State support and improvement for low-performing schools.* The SEA must assure that it will approve, monitor, and periodically review LEA comprehensive support and improvement plans consistent with requirements in section 1111(d)(1)(B)(v) and (vi) of the Act and § 200.21(e).

(4) *Participation by private school children and teachers.* The SEA must assure that it will meet the requirements of sections 1117 and 8501 of the Act regarding the participation of private school children and teachers.

(5) *Appropriate identification of children with disabilities.* The SEA must assure that it has policies and procedures in effect regarding the appropriate identification of children with disabilities consistent with the child find and evaluation requirements in section 612(a)(3) and (a)(7) of the IDEA, respectively.

(Approved by the Office of Management and Budget under control number 1810–0576)

(Authority: 20 U.S.C. 1221e–3, 3474, 7842)

§ 299.15 Consultation and performance management.

(a) *Consultation.* In its consolidated State plan, each SEA must describe how it engaged in timely and meaningful consultation consistent with § 299.13(b) with stakeholders in the development of the four components identified in §§ 299.16 through 299.19 of its consolidated plan. The stakeholders must include, at a minimum, the following individuals and entities and must reflect the geographic diversity of the State:

(1) The Governor, or appropriate officials from the Governor's office;

(2) Members of the State legislature;

(3) Members of the State board of education (if applicable);

(4) LEAs, including LEAs in rural areas;

(5) Representatives of Indian tribes located in the State;

(6) Teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals;

(7) Charter school leaders, if applicable;

(8) Parents and families;

(9) Community-based organizations;

(10) Civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students;

(11) Institutions of higher education (IHEs);

(12) Employers;
(13) Representatives of private school students;
(14) Early childhood educators and leaders; and
(15) The public.
(b) *Performance management and technical assistance.* In its consolidated State plan, each SEA must describe its system of performance management of SEA and LEA plans consistent with its consolidated State plan. This description must include—
(1) The SEA's process for supporting the development, review, and approval of the activities in LEA plans in accordance with statutory and regulatory requirements, which should address how the SEA will determine if LEA activities are aligned with the specific needs of the LEA and the SEA's strategies described in its consolidated State plan.
(2) The SEA's plan to—
(i) Collect and use data and information, which may include input from stakeholders and data collected and reported under section 1111(h) of the Act, to assess the quality of SEA and LEA implementation of strategies and progress toward meeting the desired program outcomes;
(ii) Monitor SEA and LEA implementation of included programs using the data in paragraph (b)(2)(i) of this section to ensure compliance with statutory and regulatory requirements; and
(iii) Continuously improve SEA and LEA plans and implementation; and
(3) The SEA's plan to provide differentiated technical assistance to LEAs and schools to support effective implementation of SEA, LEA, and other subgrantee strategies.

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(Authority: 20 U.S.C. 1221e–3, 3474, 7842)

§ 299.16 Academic assessments.

(a) In its consolidated State plan, if the State administers end-of-course mathematics assessments to high school students to meet the requirements under section 1111(b)(2)(B)(v)(I)(bb) of the Act and uses the exception for students in eighth grade to take such assessments under section 1111(b)(2)(C) of the Act, describe how the State is complying with the requirements of section 1111(b)(2)(C) and applicable regulations; and
(b) In its consolidated State plan, each SEA must describe how the State is complying with the requirements related to assessments in languages other than English consistent with section 1111(b)(2)(F) of the Act and applicable regulations.

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(Authority: 20 U.S.C. 1221e–3, 3474, 7842)

§ 299.17 Accountability, support, and improvement for schools.

(a) *Long-term goals.* In its consolidated State plan, each SEA must provide its baseline, measurements of interim progress, and long-term goals and describe how it established its ambitious long-term goals and measurements of interim progress, for academic achievement, graduation rates, and English language proficiency, and its State-determined timeline for attaining such goals, consistent with the requirements in section 1111(c)(4)(A) of the Act and § 200.13.
(b) *Accountability system.* In its consolidated State plan, each SEA must describe its statewide accountability system consistent with the requirements of section 1111(c) of the Act and § 200.12, including—
(1) The measures included in each of the indicators under § 200.14(b) and how those measures meet the requirements described in section 1111(c)(4)(B) of the Act and § 200.14;
(2) The subgroups of students from each major racial and ethnic group, consistent with § 200.16(a)(2), and any additional subgroups of students used in the accountability system;
(3) If applicable, the statewide uniform procedures for:
(i) Former children with disabilities in the children with disabilities subgroup consistent with § 200.16(b);
(ii) Former English learners in the English learner subgroup consistent with § 200.16(c)(1); and
(iii) Recently arrived English learners in the State to determine if an exception applies to an English learner consistent with section 1111(b)(3) of the Act and § 200.16(c)(3) and (4);
(4) The minimum number of students that the State determines are necessary to be included in each of the subgroups of students consistent with § 200.17(a)(2) and (3);
(5) The State's system for meaningfully differentiating all public schools in the State, including public charter schools, consistent with the requirements of section 1111(c)(4)(C) of the Act and § 200.18, including—
(i) The distinct and discrete levels of school performance, and how they are calculated, under § 200.18(a)(2) on each indicator in the statewide accountability system;
(ii) The weighting of each indicator, including how certain indicators receive substantial weight individually and much greater weight in the aggregate, consistent with § 200.18(b) and (c)(1) and (2);
(iii) The summative determinations, including how they are calculated, that are provided to schools under § 200.18(a)(4); and
(iv) How the system for meaningful differentiation and the methodology for identifying schools under § 200.19 will ensure that schools with low performance on substantially weighted indicators are more likely to be identified for comprehensive support and improvement or targeted support and improvement, consistent with § 200.18(c)(3) and (d)(1)(ii);
(6) How the State is factoring the requirement for 95 percent student participation in assessments into its system of annual meaningful differentiation of schools consistent with the requirements of § 200.15;
(7) The State's uniform procedure for averaging data, including combining data across school years, combining data across grades, or both, as defined in § 200.20(a), if applicable;
(8) If applicable, how the State includes all public schools in the State in its accountability system if it is different from the methodology described in paragraph (b)(5), consistent with § 200.18(d)(1)(iii).
(c) *Identification of schools.* In its consolidated State plan, each SEA must describe—
(1) The methodologies, including the timeline, by which the State identifies schools for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the Act and § 200.19(a), including:
(i) Lowest-performing schools;
(ii) Schools with low high school graduation rates; and
(iii) Schools with chronically low-performing subgroups;
(2) The uniform statewide exit criteria for schools identified for comprehensive support and improvement established by the State, including the number of years over which schools are expected to meet such criteria, under section 1111(d)(3)(A)(i) of the Act and consistent with the requirements in § 200.21(f)(1);
(3) The State's methodology for identifying any school with a ''consistently underperforming'' subgroup of students, including the definition and time period used by the State to determine consistent underperformance, under § 200.19(b)(1) and (c);
(4) The State's methodology, including the timeline, for identifying schools with low-performing subgroups of students under § 200.19(b)(2) and (d) that must receive additional targeted support in accordance with section 1111(d)(2)(C) of the Act; and

(5) The uniform exit criteria, established by the SEA, for schools participating under title I, part A with low-performing subgroups of students established by the State, including the number of years over which schools are expected to meet such criteria, consistent with the requirements in § 200.22(f).

(d) *State support and improvement for low-performing schools.* In its consolidated State plan, each SEA must describe—

(1) How the SEA will meet its responsibilities, consistent with the requirements described in § 200.24(d) under section 1003 of the Act, including the process to award school improvement funds to LEAs and monitoring and evaluating the use of funds by LEAs;

(2) The technical assistance it will provide to each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement, including how it will provide technical assistance to LEAs to ensure the effective implementation of evidence-based interventions, consistent with § 200.23(b), and, if applicable, the list of State-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans consistent with § 200.23(c)(2) and (3);

(3) The more rigorous interventions required for schools identified for comprehensive support and improvement that fail to meet the State's exit criteria within a State-determined number of years consistent with section 1111(d)(3)(A)(i) of the Act and § 200.21(f)(3)(iii); and

(4) How the SEA will periodically review, identify, and, to the extent practicable, address any identified inequities in resources to ensure sufficient support for school improvement in each LEA in the State serving a significant number or percentage of schools identified for comprehensive or targeted support and improvement consistent with the requirements in section 1111(d)(3)(A)(ii) of the Act and § 200.23(a).

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(Authority: 20 U.S.C. 1221e–3, 3747, 7842)

§ 299.18 Supporting excellent educators.

(a) *Educator development, retention, and advancement.* In its consolidated State plan, consistent with sections 2101 and 2102 of the Act, if an SEA intends to use funds under one or more of the included programs for this purpose, the SEA must describe—

(1) The State's system of certification and licensing of teachers and principals or other school leaders;

(2) The State's strategies to improve educator preparation programs consistent with section 2101(d)(2)(M) of the Act, particularly for educators of low-income and minority students; and

(3) The State's systems of professional growth and improvement, for educators that addresses induction, development, consistent with the definition of professional development in section 8101(42) of the Act, compensation, and advancement for teachers, principals, and other school leaders which may also include how the SEA will work with LEAs in the State to develop or implement systems of professional growth and improvement, consistent with 2102(b)(2)(B) of the Act, or State or local teacher, principal, or other school leader evaluation and support systems consistent with section 2101(c)(4)(B)(ii) of the Act.

(b) *Support for educators.* (1) In its consolidated State plan, each SEA must describe how it will use title II, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies designed to:

(i) Increase student achievement consistent with the challenging State academic standards;

(ii) Improve the quality and effectiveness of teachers, principals, and other school leaders;

(iii) Increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools; and

(iv) Provide low-income and minority students greater access to effective teachers, principals, and other school leaders consistent with the provisions described in paragraph (c) of this section.

(2) In its consolidated State plan, each SEA must describe how the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act.

(c) *Educator equity.* (1) Each SEA must describe, consistent with section 1111(g)(1)(B) of the Act, whether low-income and minority students enrolled in schools that receive funds under title I, part A of the Act are taught at different rates by ineffective, out-of-field, or inexperienced teachers compared to non-low-income and non-minority students enrolled in schools not receiving funds under title I, part A of the Act in accordance with paragraph (c)(3) of this section.

(2) For the purposes of this section, each SEA must establish and provide in its State plan a different definition, using distinct criteria, for each of the terms included in paragraphs (c)(2)(i) through (vi) of this section—

(i) A statewide definition of ''ineffective teacher'', or statewide guidelines for LEA definitions of ''ineffective teacher'', that differentiates between categories of teachers and provides useful information about educator equity;

(ii) A statewide definition of ''out-of-field teacher'' consistent with § 200.37 that provides useful information about educator equity;

(iii) A statewide definition of ''inexperienced teacher'' consistent with § 200.37 that provides useful information about educator equity;

(iv) A statewide definition of ''low-income student'';

(v) A statewide definition of ''minority student'' that includes, at a minimum, race, color, and national origin, consistent with title VI of the Civil Rights Act of 1964; and

(vi) Such other definitions for any other key terms that a State elects to define and use for the purpose of meeting the requirements in paragraph (c)(1) of this section.

(3) For the purpose of the required description under paragraph (c)(1) of this section—

(i) *Rates.* Each SEA must annually calculate, using student-level data, except as permitted under § 299.13(d)(3), the statewide rates at which—

(A) Low-income students enrolled in schools receiving funds under title I, part A of the Act, are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers; and

(B) Non-low-income students enrolled in schools not receiving funds under title I, part A of the Act, are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers; and

(C) Minority students enrolled in schools receiving funds under title I, part A of the Act are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers; and

(D) Non-minority students enrolled in schools not receiving funds under title I, part A of the Act are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers.

(ii) *Other rates.* Each SEA may annually calculate and report statewide

at the student level, except as permitted under § 299.13(d)(3), the rates at which students represented by any other key terms that a State elects to define and use for the purpose of this section are taught by ineffective teachers, out-of-field teachers, and inexperienced teachers.

(iii) *Statewide differences in rates.* Each SEA must calculate the differences, if any, between the rates calculated in paragraph (c)(3)(i)(A) and (B), and between the rates calculated in paragraph (c)(3)(i)(C) and (D) of this section.

(4) Each SEA must provide the Web address or URL of or a direct link to where it will publish and annually update the rates and differences in rates calculated under paragraph (c)(3) of this section and report on the rates and differences in rates in the manner described in § 299.13(c)(1)(iii), consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, and applicable regulations.

(5) Each SEA that describes, under paragraph (c)(1) of this section, that low-income or minority students enrolled in schools receiving funds under title I, part A of this Act are taught at higher rates, which are rates where any of the statewide differences in rates calculated under paragraph (c)(3)(iii) is greater than zero, by ineffective, out-of-field, or inexperienced teachers must—

(i) Describe the likely causes (*e.g.,* teacher shortages, working conditions, school leadership, compensation, or other causes), which may vary across districts or schools, of the most significant statewide differences in rates described in paragraph (c)(1) of this section including by identifying whether those differences in rates reflect gaps between districts, within districts, and within schools;

(ii) Provide its strategies, including timelines and Federal or non-Federal funding sources, that are—

(A) Designed to address the likely causes of the most significant differences in rates identified under paragraph (c)(5)(i) of this section; and

(B) Prioritized to address the most significant differences in rates identified under paragraph (c)(1) of this section as identified by the SEA, including by prioritizing strategies to support any schools identified for comprehensive or targeted support and improvement under § 200.19 that are contributing to those differences in rates; and

(iii) Describe its timelines and interim targets for eliminating all differences in rates identified under paragraph (c)(1).

(6) To meet the requirements of section 1111(g)(1)(B) of the Act, an SEA may—

(i) Direct an LEA, including an LEA that contributes to the differences in rates described by the SEA in paragraph (c)(1) of this section, to use a portion of its title II, part A, funds in a manner that is consistent with allowable activities identified in section 2103(b) of the Act to provide low-income and minority students greater access to effective teachers, principals, and other school leaders; and

(ii) Require an LEA to describe in its title II, part A plan or consolidated local plan how it will use title II, part A funds to address differences in rates described by the SEA in paragraph (c)(1) of this section and deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address such differences in rates or fails to meet other local application requirements applicable to title II, part A.

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(Authority: 20 U.S.C. 1221e–3, 3474, 7842)

§ 299.19 Supporting all students.

(a) *Well-rounded and supportive education for students.* (1) In its consolidated State plan, each SEA must describe how it will use title IV, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies and LEA use of funds designed to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34. This description must:

(i) Address the State's strategies and how it will support LEAs to support the continuum of a student's education from preschool through grade 12, including transitions from early childhood education to elementary school, elementary school to middle school, middle school to high school, and high school to post-secondary education and careers, in order to support appropriate promotion practices and decrease the risk of students dropping out;

(ii) Address the State's strategies and how it will support LEAs to provide equitable access to a well-rounded education and rigorous coursework in subjects in which female students, minority students, English learners, children with disabilities, or low-income students are underrepresented, such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education, health, or physical education; and

(iii) Describe how, when developing its State strategies in paragraph (1) and, as applicable, paragraph (2), the SEA considered the academic and non-academic needs of the subgroups of students in its State including:

(A) Low-income students.

(B) Lowest-achieving students.

(C) English learners.

(D) Children with disabilities.

(E) Children and youth in foster care.

(F) Migratory children, including preschool migratory children and migratory children who have dropped out of school.

(G) Homeless children and youths.

(H) Neglected, delinquent, and at-risk students identified under title I, part D of the Act, including students in juvenile justice facilities.

(I) Immigrant children and youth.

(J) Students in LEAs eligible for grants under the Rural and Low-Income School program under section 5221 of the Act.

(K) American Indian and Alaska Native students.

(2) If an SEA intends to use title IV, part A funds or funds from other included programs for the activities that follow, the description must address how the State strategies in this paragraph support the State-level strategies in paragraph (a)(1) of this section to:

(i) Support LEAs to improve school conditions for student learning, including activities that create safe, healthy, and affirming school environments inclusive of all students to reduce—

(A) Incidents of bullying and harassment;

(B) The overuse of discipline practices that remove students from the classroom, such as out-of-school suspensions and expulsions; and

(C) The use of aversive behavioral interventions that compromise student health and safety;

(ii) Support LEAs to effectively use technology to improve the academic achievement and digital literacy of all students; and

(iii) Support LEAs to engage parents, families, and communities.

(b) *Program-specific requirements*—(1) *Title I, part A.* Each SEA must describe the process and criteria it will use to waive the 40 percent schoolwide poverty threshold under section 1114(a)(1)(B) of the Act submitted by an LEA on behalf of a school, including how the SEA will ensure that the schoolwide program will best serve the needs of the lowest-achieving students in the school.

(2) *Title I, part C.* Each SEA must describe—

(i) How the SEA and its local operating agencies (which may include LEAs) will—

(A) Establish and implement a system for the proper identification and recruitment of eligible migratory children on a statewide basis, including the identification and recruitment of preschool migratory children and migratory children who have dropped out of school, and how the SEA will verify and document the number of eligible migratory children aged 3 through 21 residing in the State on an annual basis;

(B) Identify the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school;

(C) Ensure that the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school, are addressed through the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs; and

(D) Use funds received under title I, part C to promote interstate and intrastate coordination of services for migratory children, including how the State will provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year (*i.e.,* use of the Migrant Student Information Exchange (MSIX), among other vehicles);

(ii) The unique educational needs of the State's migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school, based on the State's most recent comprehensive needs assessment;

(iii) The current measurable program objectives and outcomes for title I, part C, and the strategies the SEA will pursue on a statewide basis to achieve such objectives and outcomes;

(iv) How it will ensure there is consultation with parents of migratory children, including parent advisory councils, at both the State and local level, in the planning and operation of title I, part C programs that span not less than one school year in duration, consistent with section 1304(c)(3) of the Act;

(v) Its priorities for the use of title I, part C funds, specifically related to the needs of migratory children with ''priority for services'' under 1304(d) of the Act, including:

(A) What measures and sources of data the SEA, and if applicable, its local operating agencies, which may include LEAs, will use to identify those migratory children who are a priority for services; and

(B) When and how the SEA will communicate those determinations to all local operating agencies, which may include LEAs, in the State.

(3) *Title I, part D.* In its consolidated State plan, each SEA must include:

(i) A plan for assisting in the transition of children and youth between correctional facilities and locally operated programs; and

(ii) A description of the program objectives and outcomes established by the State that will be used to assess the effectiveness of the program in improving the academic, career, and technical skills of children in the program, including the knowledge and skills needed to earn a regular high school diploma and make a successful transition to postsecondary education, career and technical education, or employment.

(4) *Title III, part A.* (i) Each SEA must describe its standardized entrance and exit procedures for English learners, consistent with section 3113(b)(2) of the Act. These procedures must include valid and reliable, objective criteria that are applied consistently across the State.

(ii) At a minimum, the standardized exit criteria must—

(A) Include a score of proficient on the State's annual English language proficiency assessment;

(B) Be the same criteria used for exiting students from the English learner subgroup for title I reporting and accountability purposes; and

(C) Not include performance on an academic content assessment.

(5) *Title IV, part B.* In its consolidated State plan, each SEA must describe, consistent with the strategies identified in (a)(1) of this section and to the extent permitted under applicable law and regulations:

(i) How it will use title IV, part B funds, and other Federal funds to support State-level strategies and

(ii) The processes, procedures, and priorities used to award subgrants.

(6) *Title V, part B, subpart 2.* In its consolidated State plan, each SEA must provide its specific measurable program objectives and outcomes related to activities under the Rural and Low-Income School program, if applicable.

(7) *McKinney-Vento Education for Homeless Children and Youths program.* In its consolidated State plan, each SEA must describe—

(i) The procedures it will use to identify homeless children and youths in the State and assess their needs;

(ii) Programs for school personnel (including liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act, as amended, principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths;

(iii) Its procedures to ensure that—

(A) Disputes regarding the educational placement of homeless children and youths are promptly resolved;

(B) Youths described in section 725(2) of the McKinney-Vento Homeless Assistance Act, as amended, and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this paragraph from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school policies;

(C) Homeless children and youths have access to public preschool programs, administered by the SEA or LEA, as provided to other children in the State;

(D) Homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities; and

(E) Homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, and local nutrition programs; and

(iv) Its strategies to address problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays and retention, consistent with sections 722(g)(1)(H) and (I) of the McKinney-Vento Homeless Assistance Act, as amended.

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